CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

INDEX.

	Vol. I Page
Docket Entries	1
Bill of Complaint	4
Schedule "A": Public Notice	21
Schedule "B": An Ordinance	22
Schedule "C": Notice to All Workers in Hudson County	23
Schedule "D": Letter to William J. Carney, Dated December 20, 1937	25
Schedule "E": Public Notice as to Public Peace, etc.	26
Schedule "F":	
Letter to Daniel J. Casey, Dated December 17, 1937	27
Letter to Samuel L. Rothbard, Dated December 20, 1937	29
Letter to Daniel J. Casey, Dated December 20, 1937	30
Letter to Samuel L. Rothbard, Dated December 22, 1937	32
Letter to Daniel J. Casey, Dated December 23, 1938	33
Letter to Spaulding Frazer, Dated December 27, 1937	34
Letter to Daniel Casey, Dated December 28, 1937	35
Letter to Spaulding Frazer, Dated December 30, 1937	38
Letter to Daniel Casey, Dated December 27, 1937	39
Resolution Adopted by Veteran Organizations, Dated December 28, 1937	41
Letter to Daniel J. Casey, Dated January 3, 1938	45
Subpœna ad Respond	47
Notice of Motion for Bill of Particulars	48
Motion for Bill of Particulars	49
Order Requiring Bill of Particulars	53
Proof of Service	54
Bill of Particulars	55
Answer of Frank Hague, Daniel J. Casey, Harry Walsh and The Board of Commissioners of Jersey City	56
Amendment by Way of Supplement	61
Affidavit of Morris L. Ernst	62
Amendment to Defendants' Answer	69
Further Amendment to Defendants' Answer	71
Opinion, Clark, D. J.	72
Discussion	132
Objections to the Form of Proposed Decree	139

INDEX—Continued.

	Vol. I Page
Comments and Objections to Findings of Fact Submitted by Plaintiff	141
Objections and Comments to the Proposed Conclusions of Law	145
Findings of Fact and Conclusions of Law	146
Final Judgment and Decree	155
Notice of Appeal	159
Proceedings at Trial	160
Daniel J. Foley—	
Direct Examination	172
Cross-Examination	191
Re-Direct Examination	205
Re-Cross-Examination	205
Cross-Examination	209
David L. Clendennin—	
Direct Examination	213
Cross-Examination	237
David Silverstein—	
Direct Examination	245
Cross-Examination	268
James P. Sweeney—	
Direct Examination	284
Cross-Examination	306
Nancy Cox—	
Direct Examination	309
Cross-Examination	341
Jules Nydes—	
Direct Examination	343
Cross-Examination	350
Aaron Gilmartin—	
Direct Examination	357
Cross-Examination	366
Re-Direct Examination	372
Harry Arons—	
Direct Examination	373
Cross-Examination	376
Bella Kussy—	
Direct Examination	381
Cross-Examination	385

INDEX—Continued.

	Vol. I Page
Sol Chernofsky—	
Direct Examination	388
Cross-Examination	396
Morris Milgram—	
Direct Examination	402
Cross-Examination	411
Grace Milgram—	
Direct Examination	415
Cross-Examination	418
Re-Direct Examination	420
Morris Milgram (Recalled)—	
Direct Examination	421
Cross-Examination	422
Frances McKee—	
Direct Examination	429
Cross-Examination	435
Mildred Cox—	
Direct Examination	439
Cross-Examination	441
Ashley Carrick—	
Direct Examination	443
Cross-Examination	445
William C. Kernan—	
Direct Examination	447
Cross-Examination	450
Ashley Carrick (Recalled)—	
Cross-Examination	450
Re-Direct Examination	451
Timothy O'Brien—	
Direct Examination	454
Cross-Examination	465
Joseph Zarrella—	
Direct Examination	472
Cross-Examination	477
William Callahan—	
Direct Examination	478
Cross-Examination	481

Vol. I
Page

Francis Hunter—
Direct Examination 482

Joseph Zarrella (Recalled)—
Direct Examination 483

Francis Hunter (Resumed)—
Direct Examination 484
Cross-Examination 486

Thomas Hurley—
Direct Examination 494

Thomas Cometa—
Direct Examination 499
Cross-Examination 507

Joseph C. Glavin—
Direct Examination 514

Daniel Casey—
Direct Examination 529

Vol. II
Cross-Examination 790
Re-Direct Examination 838
Re-Cross-Examination 856

Mary Padla—
Direct Examination 858

Jean Palmieri—
Direct Examination 861

Lila Rocco—
Direct Examination 864

Grace Fecore—
Direct Examination 866
Cross-Examination 869

Dorothy Opitz—
Direct Examination 871

Charles C. Webber—
Direct Examination 878

Dorothy Opitz (Recalled)—
Direct Examination 880

Jeannette Kasen (Stipulated) 881

INDEX—Continued

Vol. II
Page

Charles C. Webber (Resumed)—
Direct Examination 884

Samuel Macri—
Direct Examination 889
Cross-Examination 964
Re-Direct Examination 1012
Re-Cross-Examination 1018

Raymond Chasan—
Direct Examination 1019

Frank Hague—
Direct Examination 1030

Vol. III
Cross-Examination 1395
Re-Direct Examination 1555

William Callahan—
Direct Examination 1578

	VOL. IV Original	Print
Stenographer's minutes of hearing in D. C. U. S., District of New Jersey, May 26, 1938:		
Appearances	85	83
Colloquy	85	83
Statement by the Court re tentative decree	85	83
Proceedings in U. S. C. C. A., Third Circuit	107	100
Minute entry of hearing	108	101
Opinion, Biggs, J.	108	101
Appendix—Findings of fact and conclusions of law of trial court	109	101
Final judgment and decree of trial court	141	128
Ordinance of January 22, 1924	150	136
Ordinance of April 15, 1930	154	139
Dissenting opinion, Davis, J.	155	141
Judgment	157	141
Clerk's certificate	187	164
Order allowing certiorari	(omitted in printing)	
	187	165

INDEX TO EXHIBITS.

PLAINTIFFS' EXHIBITS.

Ex. No.	Description.	Offered Vol. I Page	Printed Vol. IV Page
1	Handbill	177	1
2	Stenographic Record	324	3
3	Stenographic Record	324	3
4	Leaflet	417	5
		Vol. III	
5	Card	1583	6
6	No Exhibit.		
		Vol. I	
7	Circular	457	7
8	Newspaper Picture From "Sunday News", May 8, 1938	476	8
		Vol. III	
9	Card	1583	..
		Vol. I	
10	Applications	539	9
11	Permit Cranted for Street Meetings, Religious	539	9
		Vol. II	
12	Correspondence, Rothbard and Casey	687	9
13	Letters, Frazer and Casey	687	10
14	Form Used in Connection With Street Corner Permits	787	12
15	Pawnbrokers' Descriptive Sheets	688	12
16	Telegram, Dated May 10, to Daniel Casey From J. Harlan Cleveland, and Attached Papers	688	13
17	Apolication, Telegraphic, by Wm. N. Callahan, Managing Editor of "The Catholic Worker"	605	15
18	12 Letters of Protest	684	17
19	8 Letters, Dated Prior to January 1, 1938, Protests	685	18
20	Batch of Additional Letters of Protest	685	20
21	Protest of Jersey City Real Estate Board, Dated December 30, 1937	685	21

INDEX TO EXHIBITS—Continued.

Ex. No.	Description.	Offered Vol. II Page	Printed Vol. IV Page
22	Resolution From Community Center, Dated December 30, 1937	686	21
23	Letter, American War Veterans of Italian Extraction, December 29, 1937	686	22
24	Letter of Protest From Hudson County Post No. 2	687	22
25	Two Undated Letters of Protest	687	22
26	Five Protests	691	23
27	Letter With Lynch Resolution	691	23
28	Letter, "A Citizen", May 21	692	..
29	Page From "Jersey Observer", May 7, 1938	720	25
30	Card With Name of Witness Casey	726	27
31	Correspondence Re Denials of Permits	788	29
32	Circular Containing President's Message	933	33
33	Notice, Dated December 28, 1937	1064	35
34	Postal Cards Re Meeting of Veterans	1064	35
35	Notice of Meeting of Veterans	1067	36
		Vol. III	
36	Correspondence Between Mr. Hamill and Mr. Frazer	1200	37
37	List of Jersey City Plants	1222	44
38	Anti-Placard Ordinance	1225	45
39	Page 5, "Newark Star-Eagle", June 11, 1938	1338	..
40	"Newark Sunday Call", November 21, 1937	1341	47
41	WOR Radio Speech	1557	..
42	Clipping "New York Times", December 27, 1937	1557	49
43	Clipping "Jersey Journal", January 13, 1938	1558	51
44	Page 9, "Jersey Journal"	1559	55
45	Clipping "Jersey Journal", January 7, 1938	1559	57
46	Statement of January 6, 1938, at Armory	1560	59
47	Statement of Mayor Hague	1564	..
48	Picture of a Meeting, 1929	1574	..

INDEX TO EXHIBITS—Continued.

DEFENDANTS' EXHIBITS.

Ex. No.	Description.	Offered Vol. III Page	Printed Vol. IV Page
1	Clipping	1591	61
2	Clipping	1591	..
3	Clipping	1591	62
4	Clipping	1591	62
5	Clipping	1591	62
6	Clipping	1591	62
7	Five Cards	1591	62
8	Bureau of Identification Cards	1592	62
9	Picture, Captioned "Jerry O'Connell With Communist Herbert Benjamin, and Socialist David Lasser"	1592	63
10	Library Book Re Garland Fund	1592	63
11	Affidavit in the "New Masses"	1595	65
12	"Akron Times Press", May 27, 1938	1445	..
13	"Akron Beacon Journal"	1446	..
14	"American Republic Magazine" Re Dubinsky	1595	66
15	"Newark News", November 23, 1937, Item	1595	67
16	"Jersey Journal", Item of May 2, 1938	1595	69
17	Clipping "New York Times", May 24, 1937	1596	71
18	Clipping "New York American", March 9, 1937	1596	71
19	Clipping "New York Times", June 7, 1937	1596	71
20	Clipping "New York Times", March 29, 1937	1596	71
21	Clipping "New York Times", January 31, 1937	1596	71
22	Clipping "New York Times", January 15, 1937	1596	71
23	Clipping "New York Times", March 4, 1937	1596	72
24	Clipping "Herald Tribune", February 3, 1937	1596	72
25	Clipping "New York Times", April 24, 1937	1596	72
26	Clipping "New York Times", February 31, 1936	1596	72
27	Fish Report—Portions Identified	1590	73
28	Copy of Writ of Mandamus	1597	82
29	Copy of Return on Writ of Mandamus	1597	82

IN THE

District Court of the United States,

FOR THE DISTRICT OF NEW JERSEY.

No. E-5865.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET ALS.,

v.

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET ALS.

DOCKET ENTRIES.

Jan. 7, 1938.	Bill of Complaint filed.
Jan. 7, 1938.	Subpœna issued.
Jan. 15, 1938.	Subpœna returned served January 11th, filed.
Jan. 29, 1938.	Notice of Motion for Bill of Particulars filed.
Feb. 7, 1938.	Hearing on Motion for Bill of Particulars. Motion granted as to #1 of Particular #10, Denied as to others. 5 days to Answer Particulars, 5 days to file Answer of Defendants. (Clark)
Feb. 9, 1938.	Order Requiring Bill of Particulars filed.
Feb. 17, 1938.	Bill of Particulars filed.
Feb. 19, 1938.	Answer of Defendants filed.

Feb. 21, 1938.	Notice Fixing Place for Trial filed. (Newark)
June 1, 1938.	Final Hearing. Motion to Dismiss, Denied. Adjourned to June 2.
June 2, 1938.	Final Hearing Continued. Adjourned to June 3.
June 3, 1938.	Final Hearing Continued. Adjourned to June 7.
June 7, 1938.	Final Hearing Continued. Adjourned to June 8.
June 8, 1938.	Final Hearing Continued. Adjourned to June 9.
June 9, 1938.	Final Hearing Continued. Adjourned to June 10.
June 10, 1938.	Final Hearing Continued. Adjourned to June 14.
June 10, 1938.	Amendment by way of Supplement filed.
June 14, 1938.	Final Hearing Continued. Adjourned to June 15.
June 15, 1938.	Final Hearing Continued. Adjourned to June 16.
June 16, 1938.	Final Hearing Continued. Adjourned to June 17.
June 17, 1938.	Final Hearing Continued. Adjourned to June 20.
June 20, 1938.	Final Hearing Continued. Adjourned to June 21. Decision Reserved on Motion to Quash Subpœna.
June 21, 1938.	Final Hearing Continued. Adjourned to June 23.

June 21, 1938. Affidavit filed.

June 22, 1938. Memorandum in Support of Application filed.

June 23, 1938. Amendment to Answer filed.

June 23, 1938. Final Hearing Continued. Adjourned to June 30. (Clark)

Aug. 1, 1938. Further Amendment to Answer filed.

Oct. 27, 1938. Opinion filed. (Clark)

Nov. 2, 1938. Testimony filed.

Nov. 5, 1938. Objections to Form of Proposed Decree, filed.

Nov. 5, 1938. Consents and Objections to Findings of Fact, filed.

Nov. 7, 1938. Findings of Fact and Conclusions of Law, filed.

Nov. 7, 1938. Final Judgment and Decree filed.

Nov. 7, 1938. Notice of Appeal filed. (Copy to Frazer & Circuit Court.)

Nov. 21, 1938. Receipt from Circuit Court filed.

BILL OF COMPLAINT.

(Filed January 7, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

IN EQUITY.

Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union,

Plaintiffs,

v.

Frank Hague, Individually and as Mayor of Jersey City, Daniel J. Casey, Individually and as Director of Public Safety of Jersey City, Harry Walsh, Individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City,

Defendants.

To the Honorable the Judges of the United States District Court for the District of New Jersey:

Plaintiffs, Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union, respectfully show that:

1. Plaintiff, Committee for Industrial Organization (hereinafter called CIO), is a voluntary committee of various labor organizations throughout the United States, and has its principal office in the District of Columbia. It has for its main purposes the organization of unorganized workers into voluntary labor organizations to be affiliated with said committee, to the end that said labor organizations shall act as the collective bargaining agencies, on behalf of their respective members in respect to wages, hours of work, and other terms and conditions of employment, in order to seek and obtain improvements in the working conditions aforesaid; and the active and continual assistance of its affiliated labor organizations in their endeavors to stabilize their respectve industres and elevate the working conditions therein. It has actively engaged in the work as aforesaid in Jersey City and elsewhere, and has a lawful right to continue so to do.

2. Plaintiff, Steel Workers Organizing Committee of the Committee for Industrial Organization, is a voluntary organization affiliated with the plaintiff, CIO, and engaged in the organization of employees in the steel industry into the Amalgamated Association of Iron, Steel and Tin Workers, a national labor organization consisting of approximately 500,000 members in the United States, including approximately 10,000 members in New Jersey. Plaintiff, United Electrical Radio and Machine Workers of America, an affiliate of CIO, is a national unincorporated labor organization, having its principal office in New York City, and having a membership of approximately 125,000 workers throughout the United States, including approximately 10,000 Workers in New Jersey. Plaintiff, United Rubber Workers of America, an affiliate of plaintiff, CIO, is an unincorporated national labor organization having its principal office in Akron, Ohio, and having a membership of approximately 75,000 throughout the United States, including 8000 members in New Jersey. Each of these plaintiffs has actively engaged in the organization of unorganized

workers in Jersey City and elsewhere employed in their respective industries to the end that collective bargaining agencies may be established on their behalf, and improvements in the working conditions of all workers within their respective industries may be obtained, and has a lawful right to continue such activities.

3. Plaintiff, William J. Carney, is director for the State of New Jersey of the plaintiff, CIO, and plaintiffs, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley are field representatives of the CIO, who have been assigned by it to work under the supervision of plaintiff William J. Carney in the organization of CIO trade unions within the State of New Jersey.

4. Plaintiff, American Civil Liberties Union, is a membership corporation organized and maintained for the purpose of protecting the rights to freedom of speech, the press, and assembly, as guaranteed to the people by the Constitution of the United States and the Constitutions of the respective States. In furtherance of these purposes, the said plaintiff has come to the aid of persons and organizations whose constitutional, civil and property rights are infringed by unlawful action of public authorities and others, and to this end said plaintiff arranges public meetings for the full and free discussion of constitutional issues, with particular reference to the status of civil rights in the United States and in municipalities in the several States. In furtherance of its purposes said plaintiff raises funds by solicitation of, and contributions from the general public, and these funds are used to carry on its work and the work of other organizations similarly engaged.

5. The defendant, Frank Hague, is Mayor of the City of Jersey City; the defendant, Daniel J. Casey, is Director of Public Safety of Jersey City; the defendant, Harry Walsh, is Chief of Police of Jersey City, and the defendant, The Board of Commissioners of Jersey City, is the governing body of Jersey City.

6. This is a suit of civil nature, in equity, arising under the Constitution and laws of the United States, in which the amount in controversy exceeds $3000 exclusive of interest and costs.

7. This is a suit of a civil nature, in equity, to redress the deprivation, under color of state law, statute and ordinance, of rights, privileges and immunities secured by the Constitution of the United States and of rights secured by laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

8. For some time prior to November 29, 1937, the defendants, acting under instructions and domination of defendant Frank Hague, had denied to plaintiffs Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley the right to hold any lawful meetings within the territorial limits of Jersey City, County of Hudson and State of New Jersey. Said denial was based by the defendants, acting under the purported authority of their respective offices, upon the allegation made by them that said plaintiffs are Communists or Communist organizations and that they were therefore required, under the terms of an ordinance of Jersey City adopted January 21, 1920, annexed hereto and marked Schedule A and made a part hereof as though fully set forth, to obtain from the defendant Harry Walsh, Chief of Police of Jersey City, permits for any meetings. Said plaintiffs charge that said ordinance is in violation of the Constitution of the United States, on its face and as applied to said plaintiffs, as more specifically set forth hereinafter.

9. Said plaintiffs respectfully show and charge that the conduct of the defendants and the announcement of their policy as aforesaid was and is in pursuance of an unlawful

plan and conspiracy entered into by said defendants as public authorities of the City of Jersey City to forbid all meetings organized by said plaintiffs for the purpose of discussing the work of the CIO. The defendants have enforced a censorship by informing owners of meeting halls in the City of Jersey City that a permit is required from the chief of police under the ordinance marked Schedule A, before any meeting organized by said plaintiffs in behalf of the CIO may be held, and have threatened to enforce against such owners the penalties prescribed in said ordinance of a term of imprisonment not exceeding one year or a fine not exceeding $300, or both. The defendants have also intimidated the owners of meeting halls against renting such halls to said plaintiffs or their representatives by threats, express or implied, to effect increases in tax assessments, deprivation of licenses otherwise available, and minute police regulation over the conduct of their business, and by charging that said plaintiffs and those affiliated with them would, at such meetings, speak upon the subject of obstructing the government of the United States and of the State of New Jersey, and would advocate the abolition, overthrow or change of the government of the United States and of the State of New Jersey, and would advocate the use of force or violence against the government of the United States and the State of New Jersey, contrary to the provisions of the ordinance marked Schedule A, so that such meetings would be unlawful without a permit obtained from the chief of police of Jersey City. Said plaintiffs charge that the aforesaid representations concerning the nature of the meetings to be held under their auspices were false and fraudulent; that said plaintiffs intended merely to hold peaceful and lawful meetings for the discussion of the work of the CIO, for the purpose of answering questions propounded by workers in Jersey City as to organizational activities of the CIO; to assist unorganized workers of Jersey City in self-organization, and to organize in Jersey City local units affiliated with CIO; that said

plaintiffs at no time intended to advocate at such meetings obstruction or overthrow of the governments of the United States and of the State of New Jersey, but on the contrary intended to explain to workingmen the purposes and aims of the Wagner National Labor Relations Act adopted by the Congress of the United States and approved by the President of the United States, and the benefits to be derived from said statute by workingmen, and the aid which the Committee for Industrial Organization would furnish workingmen to enjoy the benefits of said statute.

10. Upon the refusal of the defendants acting in their official capacities to permit [illegible]y CIO meeting to be held in Jersey City, plaintiff American Civil Liberties Union, deeming the action of the defendants under purported authority of the ordinance marked Schedule A to be in violation of the Constitution of the United States, attempted to rent a meeting hall in Jersey City for the purpose of holding meetings to discuss the infringement of civil liberties and constitutional rights by the defendants, and said plaintiff was unable to obtain such meeting places because the owners thereof had been intimidated by defendants, acting in their official capacities, against renting to plaintiff American Civil Liberties Union, in the same manner as alleged in the preceding paragraph, and by threats of penalties to be exacted under said ordinance, if plaintiffs were permitted to hold a meeting without a permit first having been obtained by the owner of such meeting place from the chief of police of Jersey City.

11. In furtherance of the unlawful plan and conspiracy to deprive certain workers, labor organizations and others of their civil rights, the defendants, acting under purported authority of their offices, have announced that they will not permit picketing in cases of labor disputes except where, in their opinions, the union involved was bona fide and the strike justifiable, and would eject from Jersey City persons whom they considered undesirable because of their activities in labor organization work. On numerous occasions the

defendants and their subordinates have carried these announcements into effect by actual physical interference with picketing by members of unions which did not meet the approval of the defendants, or in situations where the defendants did not approve the demands of the workers, and by the actual eviction from Jersey City of workers and persons engaged in the organization of workers into labor units. Defendants have announced that under purported authority of their offices they would continue such conduct, particularly with regard to the activities of the plaintiff CIO and the other plaintiffs affiliated with it.

12. Defendants, acting under purported authority of their offices, had, prior to November 29, 1937, also announced that the plaintiff CIO, the other plaintiffs affiliated with CIO and all other persons affiliated with CIO would be forbidden to distribute leaflets, circulars or any other printed matter upon the streets of Jersey City. In making this announcement the defendants purported to act under an ordinance of Jersey City adopted January 22, 1924, annexed hereto and marked Schedule B and made a part hereof as though fully set forth. Said plaintiffs charge that said ordinance is unconstitutional on its face and as applied to said plaintiffs, as more specifically set forth hereinafter. Section 1 of said ordinance purports to forbid distribution of all written or printed matter on any street or public place of Jersey City, and said ordinance makes no provision for a permit under any circumstances. Said plaintiffs charge, however, that said ordinance has been applied by the defendants in a discriminatory manner, distribution of leaflets, circulars and other printed matter of which said defendants approved being permitted in the streets and public places of Jersey City, whereas similar literature of which defendants disapproved has not been permitted by them to be so distributed. Plaintiffs, upon being advised that said ordinance was in violation of the Constitution of the United States, announced that on November 29, 1937, CIO circulars, of the type annexed hereto

and marked Schedule C and made a part hereof as though fully set forth, would be distributed upon certain streets of Jersey City to workingmen and other persons interested in receiving such circulars.

13. The office in which all persons who, under the direction of the plaintiffs, were to distribute the CIO circulars were to meet, is located in a building at 76 Montgomery Street, Jersey City. On the morning of November 29, 1937, under instructions issued by the defendants to the police of Jersey City, the following events occurred:

(a) Police officers were assigned to the station of the Hudson and Manhattan Railway Company in Jersey City; who stopped and attempted to turn back all persons whom they could identify as members of the CIO or who were proceeding to the office hereinbefore mentioned located at 76 Montgomery Street, Jersey City, and did in fact turn back many such persons.

(b) In the court yard back of the building at 76 Montgomery Street a platoon of mounted police were stationed.

(c) Within a radius of several blocks in all directions from said building at 76 Montgomery Street uniformed police and detectives of Jersey City accosted and searched, without warrant, persons, including the individual plaintiffs and their automobiles, confiscated CIO literature found upon such persons or in such automobiles, and forcibly seized and transported several of such persons, including plaintiffs Samuel Macri and William P. McGinn outside of the limits of Jersey City.

(d) Under the direction of the plaintiffs, a number of distributors left the headquarters at 76 Montgomery Street with CIO circulars about 7 A. M. on November 29, 1937, and peaceably proceeded to Exchange Place. After a few circulars were distributed by such persons to individuals who willingly received them, a large

number of uniformed police and detectives of Jersey City converged upon the small group of distributors and forced them toward the pier of the ferries which ply between Jersey City and New York. Seven persons were arrested for alleged violation of the ordinance, a copy of which is attached hereto as Schedule B, and were on the same day sentenced in the First Criminal Court of Jersey City to five days imprisonment. Other distributors were forcibly placed upon ferries and transported to New York City, despite their protests that they were residents of Jersey City or other communities in the State of New Jersey.

(e) Of the remaining distributors, five were arrested on a charge of unlawful assembly, under a statute of New Jersey which defines the crime of unlawful assembly to be the gathering of persons for the commission of such acts of intimidation and disorder having a natural tendency to inspire rational, firm and courageous persons with well warranted fear of serious breach of the public peace. Among the persons arrested upon this charge are plaintiffs Samuel Macri and William P. McGinn who, together with the others arrested upon this charge, were held by the Judge of the First Criminal Court of Jersey City in $1000 bail for the Grand Jury and were confined in the Hudson County jail from about noon on November 29, 1937, until early in the afternoon on November 30, 1937, when bail was furnished and they were released.

(f) After the dispersal of the group of distributors of CIO circulars, as aforementioned, the said distributors returned to headquarters at 76 Montgomery Street, replenished their supply of circulars to replace those which the police of Jersey City had confiscated, and planned to leave said building for the purpose of resuming distribution. When they reached the ground floor, they were prevented by the police, acting under the instructions of defendants, from leaving the build-

ing, the front door having been barred by the police. Among the persons confined in the lobby of said building in this manner were plaintiffs James P. Sweeney, Daniel J. Foley and William J. Traynor. Thereafter the police of Jersey City searched all persons congregated in the lobby of said building, as aforesaid, and confiscated circulars and other matter pertaining to CIO. The police then placed these persons in automobiles against their will and by force and under threats of arrest for violation of the aforementioned ordinance, attached as Schedule B, caused such persons to be transported to various points outside the limits of Jersey City.

14. Since November 29, 1937, the unlawful activities of the defendants acting under purported authority of their offices hereinbefore described have continued unabated to date; defendants have continued to threaten to cause the repeated arrests and prosecution of the plaintiffs and any persons associated with them who are found in Jersey City engaged in any activities on behalf of the CIO; have threatened under color of the ordinances and state statute on unlawful assembly hereinbefore mentioned to cause the arrest and prosecution of any persons holding CIO meetings or distributing CIO literature; have, without arrest, physically interfered with persons known to be engaged in organization activities on behalf of the CIO, and have threatened to continue such interferences; have issued repeated public statements fraudulently stating that CIO is contemplating illegal activities in Jersey City, and asserting that CIO would not be permitted to engage in any organization activities within Jersey City; and have intimidated workers in Jersey City who are members of the CIO and other workers who are sympathetic with its activities. On or about December 27, 1937, the defendant Frank Hague, as Mayor of the City of Jersey City, the person dominating the unlawful activities against CIO hereinbefore described, publicly issued a false and fraudulent

statement to the effect that CIO's "only objective is to crush by terrorism; whose motive is to force itself upon our city for the purpose of destroying life and property by violence." Numerous statements of similar purport had previously been issued by said defendant.

15. On or about December 19, 1937, plaintiff William J. Carney, in his own behalf and in behalf of the other plaintiffs herein, issued a statement of the intention of plaintiffs to hold an open air meeting in Jersey City for the purpose of discussing the CIO movement, the expression of civil liberty in Jersey City, and the necessity of obtaining the constitutional privilege of freedom of speech and the press through such meetings and through the distribution of circulars and pamphlets relating to the constitutional rights and privileges of the workers. Thereafter on December 20, 1937, James A. Hamill, corporation counsel of Jersey City, acting on behalf of the defendants, addressed to plaintiff William J. Carney, a warning and threat of prosecution if the plans as announced were carried out in Jersey City. A copy of said letter is attached hereto and marked Schedule D, and made a part hereof as though fully set forth.

16. On December 17, 1937, plaintiff American Civil Liberties Union, without admitting the constitutionality of an ordinance of Jersey City adopted April 15, 1930, a copy of which is annexed hereto and marked Schedule E and made a part hereof as though fully set forth, but for the purpose of avoiding conflict with defendants, applied for a permit for an open air public assembly, and on December 23, 1937, a similar application for a permit to hold an open air public assembly was made on behalf of the CIO. These applications have been denied, and there are attached hereto and marked Schedule F, and made a part hereof as though fully set forth, said applications and subsequent correspondence pertaining thereto, and plaintiffs charge

that the refusal by defendants to permit plaintiffs to hold the open air assemblies contemplated is in violation of their rights and privileges as guaranteed by the Constitution of the United States.

17. The individual plaintiffs are employees of the Committee for Industrial Organization charged with the duty of advancing by peaceful and lawful activities within the City of Jersey City the interests of said committee and the trade unions affiliated with it. There are located in Jersey City a large number of industrial plants engaged in the manufacture of a variety of products which are processed from raw materials received through the channels of interstate commerce, and which products, upon completion, are largely shipped to other states through various instrumentalities of interstate commerce. The employees of such plants are entitled to the privileges and benefits of the aforementioned National Labor Relations Act of the United States, and plaintiffs are desirous of informing such employees of their rights under such statute, and to this end desire to assemble peaceably within Jersey City and to give information concerning such statute and the aims of the CIO to the public.

18. All of the activities which the plaintiffs have sought and are seeking to engage in within the limits of Jersey City were and are to be carried out in a peaceful, law-abiding manner and without intimidation, fraud, violence, or any other unlawful methods. The defendants, under color of their authority, by acting unlawfully and in defiance of the constitutional rights and privileges of the plaintiffs, have committed or caused to be committed by their agents and police officers acting through their orders and directions, all of the aforementioned illegal acts for the purpose of preventing the plaintiffs and those associated with them from the privilege of renting meeting places, using the streets of the city in the same manner as others have been and are permitted to use them, and

for the purpose of holding public meetings to voice their grievances at the aforesaid actions of the defendants.

19. Plaintiffs charge that defendants have systematically discriminated against plaintiffs in the application of the aforementioned ordinances and statute in that other persons and organizations have been permitted by defendants to do the very acts hereinbefore enumerated which plaintiffs have attempted and still desire to do in Jersey City, whereas said ordinances and statute have been utilized by defendants as a cloak for censoring and forbidding the same privileges, immunities and rights to plaintiffs merely because defendants disapprove of the aims and purposes of the Committee for Industrial Organization represented by the individual plaintiffs. Plaintiffs further charge that said ordinances violate the Constitution of the United States, particularly the provisions hereinafter set forth, and that upon this ground, as well as the discriminatory application of said ordinances against plaintiffs, the acts of defendants, heretofore committed by them and threatened to be continued, were and are unlawful.

20. The activities of the defendants have been in pursuance of an unlawful conspiracy by the defendants to injure, oppress, threaten and intimidate citizens of the United States, including the individual plaintiffs herein, and the remaining plaintiffs, in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States with intent to prevent and hinder their free exercise and enjoyment of rights and privileges so secured.

21. The unlawful acts of the defendants, which defendants threaten to repeat continuously as against the plaintiffs and all persons associated with them, violate the rights of the plaintiffs under the following provisions of the Constitution and laws of the United States:

(a) Article IV, Section 2 of the United States Constitution, which provides that "The citizens of each State

shall be entitled to all privileges and immunities of citizens in the several States."

(b) The provisions of Section 1 of the Fourteenth Amendment to the United States Constitution that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"; under which basic civil liberties, including freedom of speech, press and assemblage, are guaranteed against infringement by the several States.

(c) The National Labor Relations Act enacted by the Congress of the United States which provides among other things as follows:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." . . .
>
> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

(d) The Civil Rights Act of the United States, which declares criminal conspiracies to injure persons in the exercise of their civil rights secured to them by the Constitution or laws of the United States.

22. Plaintiffs have suffered by the acts of defendants and will continue to suffer from the acts threatened by

defendants, serious and irreparable injury to their property and personal rights and immunities, whereas defendants, if restrained as hereinafter prayed, will be enjoined merely from the commission of unlawful acts and will be confined to the lawful discharge of their duties as officers of Jersey City and will suffer no damage to their personal or official rights. Defendants have threatened and continue to threaten repeated prosecutions and repeated interferences without arrests and prosecutions in the manner hereinbefore describe; plaintiffs have no adequate remedy at law and only by injunctive relief from this Honorable Court can their rights be properly protected from the unlawful conduct of defendants.

23. The lawful employment of each of the individual plaintiffs has been and is being interfered with by the defendants acting under purported authority of their offices in violation of the Constitution of the United States. The value of the property right of each individual plaintiff in such employment exceeds $3000, exclusive of interest and costs. The plaintiff CIO and each of the remaining plaintiffs has property rights exceeding in value the sum of $3000, exclusive of interest and costs, which have been and are being interfered with by the defendants acting under the purported authority of their offices in violation of the Constitution of the United States as hereinbefore described. The amount in controversy between each plaintiff and each defendant exceeds the sum of $3000, exclusive of interest and costs.

24. The Congress of the United States and the courts have recognized that workers, acting as individuals, cannot compete with giant corporations and other employers of immense power; that the individual worker's right to a livelihood must be implemented by authority to join an organization of co-workers with power to bargain collectively on behalf of all; that otherwise there will be continued inequity, and growing unrest and instability in industry. The activities of the plaintiff CIO engaged in and

sought to be engaged in within Jersey City have all been designed to assist unorganized workers in organizing to the end that their organizations shall act as bargaining agencies on their behalf in respect to conditions of employment; and there is a great need for such activities in Jersey City, among other reasons because of the existence therein of numerous industrial plants and shops in which deplorable working conditions obtain. All of the deprivations of rights and privileges guaranteed by the Constitution of the United States, by the defendants acting under purported authority of their offices as hereinbefore described, have been part of a plan by the defendants, acting under the domination of Frank Hague, to thwart and forestall such organization of workers in Jersey City.

Plaintiffs are without adequate remedy in the courts of law and therefore pray:

1. That the defendants Frank Hague, individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, may answer this bill of complaint and each statement therein made.

2. That the defendants, their agents, servants, employees, officers and subordinates under the direction, supervision or control of defendants, or any of them, be perpetually restrained and enjoined by the injunction of this Court as follows:

(a) From interfering in any manner with the free access by plaintiffs, or by any persons acting in sympathy or in concert with plaintiffs, to, upon and through the public streets, highways and thoroughfares of Jersey City.

(b) From interfering in any manner with any of the plaintiffs in the holding of peaceful meetings organized by them or under their auspices for the purpose of discussing the work of the Committee for Industrial Organization,

and the organization in Jersey City of trade unions to be affiliated with said committee.

(c) From interfering in any manner with any of the plaintiffs in the distribution by them to persons willing to receive the same on the public streets and highways of Jersey City of literature concerning the Committee for Industrial Organization or the National Labor Relations Act, or announcing meetings to be held under the auspices of plaintiffs or the Committee for Industrial Organization.

(d) From intimidating or interfering in any way with any owner or lessee of meeting places or halls in the City of Jersey City for the purpose of preventing such owner or lessee from permitting the use of any such meeting place or hall by plaintiffs for meetings or for any other lawful purpose; and from intimidating or interfering in any way with any owner or lessee of any meeting place or hall in Jersey City for the purpose of coercing such owners or lessees, directly or indirectly, to refuse to allow any of the plaintiffs to use their premises for any lawful purpose.

(e) From seizing or destroying any circulars or other written or printed matter or emblems in the possession of plaintiffs or any other persons acting in sympathy or concert with plaintiffs or any of them.

(f) From interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs, in the holding of any peaceful meetings organized by plaintiffs in the City of Jersey City.

(g) From interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs in their peaceful conduct of organization activities within the City of Jersey City.

(h) From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person or persons to commit any of the acts enjoined by this Honorable Court.

3. That the defendants, their agents, servants, employees, officers and subordinates under the direction, supervision or control of defendants, or any of them, be perpetually restrained and enjoined by the injunction of this Court from enforcing or attempting to enforce the ordinances of Jersey City described in the bill of complaint in any manner whatsoever which will constitute interferences of the nature sought to be restrained and enjoined in the preceding prayer.

4. That plaintiffs may have such other and further relief as by this Honorable Court may be deemed just and equitable in the premises.

5. That a writ or writs of subpœna may issue commanding defendants to answer this bill of complaint and to abide by such decree as this Honorable Court may make in the premises.

SPAULDING FRAZER,
Solicitor of Plaintiffs.

SCHEDULE A.

PUBLIC NOTICE.

AN ORDINANCE regulating halls and other places used for public meetings.

The Board of Commissioners of Jersey City do ordain:

1. No person, firm or corporation owning, maintaining, operating, leasing or renting any hall, auditorium, room or other place for the holding of public meetings shall rent, lease, hire or permit the use thereof without a permit therefor first obtained from the Chief of Police for any such meeting whereat any person shall speak upon the subject of obstructing the Government of the United States or any State thereof, or advocating the abolition, overthrow or change of the Government of the United States or any such State by any means, method or activity other than those now

allowed by law, or whereat the use of force or violence against the Government of the United States or any such State or government established thereunder shall be advocated.

2. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof be sentenced to a term of imprisonment not exceeding one year or a fine of not exceeding three hundred dollars, or both

Passed January 21st, 1920

MICHAEL I. FAGEN,
JAMES F. GANNON, JR.,
A. HARRY MOORE,
CHARLES F. X. O'BRIEN,
FRANK HAGUE,
Commissioners.

FRANK A. DOLAN, City Clerk.

SCHEDULE B.

AN ORDINANCE to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets.

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain:

1. No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet.

2. No person shall distribute or cause to be distributed to the occupants of any house, place or cause to be placed into any areaway, in front of, or along the side of any house, or upon the doorstep thereof any newspaper, paper, periodical, book, magazine, circular, card or pamphlet, unless the same has been previously ordered by the person in actual

occupation of the house, in the areaway of which, in front of which, or along the side or doorstep of which said newspaper, paper, periodical, book, magazine, circular, card of pamphlet shall be distributed or placed.

3. Any person violating or causing to be violated, or consenting to, or permitting the violation of any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding Ten ($10.00) Dollars, or imprisonment for a period of not exceeding ten (10) days in the city prison or the county jail, in accordance with the statutes in such cases made and provided, or both, for the first offense, and a fine of Twenty-five ($25.00) Dollars or imprisonment not exceeding thirty (30) days, or both, for each and every subsequent offense.

4. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the Police Courts of this City.

5. This ordinance shall take effect immediately.

MICHAEL I. FAGEN,
WM. B. QUINN,
JOHN SAUL,
A. HARRY MOORE,
FRANK HAGUE,
Commissioners.

Passed: January 22, 1924

EDWARD J. HOLLAND,
City Clerk.

SCHEDULE C.

TO ALL WORKERS IN HUDSON COUNTY

Millions of workers all over the United States, with the help of the C. I. O., have ended their economic slavery and become free men and women again.

You Can Do It, Too!

Here at last is the great chance for every worker in Hudson County—the biggest opportunity in your lifetime—the opportunity to organize for better wages, for security of your job, and for better life under the protection of a C. I. O. contract.

Don't forget! Your boss CANNOT PREVENT you from joining the C. I. O.

You Cannot Be Fired!

for joining a union. You have the legal right under the Wagner Labor Act, upheld by the Supreme Court of the United States, to choose your own labor union to represent you in collective bargaining.

ARE YOU—Satisfied with Low Wages
Contented with Long Hours ?
Working without Paid Vacations
Now IS THE TIME TO ACT!

Do You Want shorter hours, more pay, better working conditions and paid vacations ?

BE WISE—ORGANIZE! JOIN THE C. I. O.

Come to this Meeting and Find Out How
Friday, December 3—8 P. M.
People's Center
160 Mercer Street, Jersey City, N. J.

Nationally Known Speakers:

Michael Quill
President of the Transport Workers Union

Allan Haywood
C. I. O. Director for New York

Harry Wendrich
Representative, Printing Pressmen's Union

William J. Carney
C. I. O. Director for New Jersey

ADMISSION FREE!

SCHEDULE D.

CITY OF JERSEY CITY
Law Department
Jersey City, N. J.

December 20, 1937.

Mr. William J. Carney,
17 William Street,
Newark, New Jersey.

Dear Sir:

The newspapers contain articles in which you are quoted as saying that you intend to distribute pamphlets and papers in Jersey City, with or without the consent of the municipal authorities. You are further quoted in the press as saying that you intend to organize and hold a public meeting or public meetings in Jersey City, with or without consent or permit from the City administration.

Assuming you have been correctly quoted and that your intention is such as stated, I deem it advisable to direct your attention to the law of the State and to certain ordinances of the City, relating to the actions and conduct you contemplate carrying out.

On January 22, 1924, the Board of Commissioners of the Mayor and Aldermen of Jersey City passed an ordinance, entitled:

"An Ordinance to regulate the distribution of Newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets."

Section 1 of that ordinance reads:

"No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, papers, periodicals, books, magazines, circulars, cards of pamphlets."

This ordinance is still in force and any complaint regarding the violation of the provisions I have quoted or of any other provision of the ordinance, is cognizable before the

Police Courts of the City. The ordinance provides a penalty upon conviction, for any person violating the ordinance or causing it to be violated or consenting thereto, or permitting the violation of any of the provisions thereof. The penalty is a fine of not exceeding ten dollars or imprisonment for a period not exceeding ten days in the City Prison or in the County Jail, in accordance with the statutes in such cases made and provided, or both, for the first offense and a fine of twenty-five dollars or imprisonment not exceeding thirty days or both for each and every subsequent offense.

On the subject of public parades or public assembly, I call your attention to an ordinance adopted April 15, 1930, by the Board of Commissioners of Jersey City. It is entitled:

SCHEDULE E.

Public Notice

An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage.

The Board of Commissioners of Jersey City Do Ordain:

1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said applica-

tion, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both.

5. This ordinance shall take effect upon its final passage.

Introduced April 1st, 1930
Adopted April 15th, 1930

JOHN BEGGANS
MICHAEL I. FAGEN
ARTHUR POTTERTON
WILLIAM B. QUINN
FRANK HAGUE.
Commissioners

Dated, City Clerk's Office
Jersey City, April 21st, 1930
EDWARD J. HOLLAND, City Clerk.

SCHEDULE F.

24 Commerce Street
0161
December 17th, 1937

Hon. Daniel J. Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey

Dear Director Casey:—

I have been instructed by my client, The American Civil Liberties Union, to make application for a permit on behalf of my client, for the purpose of holding an open air public assembly in the City of Jersey City. I herewith make ap-

plication accordingly. Said open air public assembly will be conducted under the auspices of the American Civil Liberties Union and the general public will be invited thereto. Various prominent speakers will address the public attending said meeting on the subject of civil liberties. The American Civil Liberties Union desires to obtain said permit for said meeting for any one of the following evenings, namely, Monday, December 20th, 1937, Tuesday, December 21st, 1937, Wednesday, December 22nd, 1937 or Thursday, December 23rd, 1937. Said meeting will commence at 8:00 P. M. in the evening and will end at about 10:30 p. m. in the evening.

It is the desire of the American Civil Liberties Union to conduct said meeting on the steps and plaza in front of the Court House located in Jersey City. If the steps and plaza in front of the Court House are not available on any one of the evenings aforementioned, for the purpose of said meeting, then it is agreeable to the American Civil Liberties Union to conduct the meeting in any public park or in any public plaza whatsoever which you may designate in the City of Jersey City.

Will you kindly, therefore, issue a permit to the American Civil Liberties Union for such an open air public assembly, to be conducted on any one of the evenings aforementioned, in any one of the public places aforementioned.

This application is made in accordance with the provisions of "An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage", which ordinance was introduced April 1st, 1930 and which was adopted April 15th, 1930 by the Board of Commissioners of Jersey City. Please advise me if anything further is required and of your decision on this application.

Very truly yours,

SAMUEL L. ROTHBARD
On Behalf of the AMERICAN
CIVIL LIBERTIES UNION

SLR:BN

DEPARTMENT OF PUBLIC SAFETY
CITY HALL
JERSEY CITY, N. J.

DANIEL CASEY,
Director
WALTER M. DALY
Secretary to the Director

EDWARD A. FLAHERTY
Deputy Director
THOMAS H. HOPKINS
Secretary to the
Deputy Director

December 20, 1937

Mr. Samuel L. Rothbard
Law Offices
24 Commerce Street
Newark, New Jersey

Dear Sir:

I acknowledge receipt of your letter of the 17th instant, in which you make application for a permit to hold open air public assembly in the City of Jersey City. You inform me that this application is made on behalf of your client, the American Civil Liberties Union. You desire to obtain the permit for any one of the following evenings, namely: Monday, December 20th, 1937; Tuesday, December 21, 1937; Wednesday, December 22, 1937, or Thursday, December 23, 1937. The meeting, according to your statement, is to commence at 8.00 o'clock and end at about 10.00 o'clock in the evening. It is, as you state, the desire of your client to conduct the meeting on the steps and plaza of the Court House in Jersey City, or in any public park, or in any public plaza in Jersey City.

Your application comes under the provisions of an Ordinance adopted April 15, 1930, by the Board of Commissioners of Jersey City. This Ordinance is entitled: "An Ordinance to preserve public peace and good order and to

prevent riots, disturbances and disorderly assemblages." I enclose a copy of it herewith for your information.

The Ordinance imposes upon me, as Director of Public Safety, the duty of investigating all of the facts and circumstances pertinent to the application you make, to enable me to determine whether to grant or refuse the permit applied for.

Will you please, therefore, let me know what is the purpose of the meeting for which your client desires a permit, and who are the persons who will address the meeting.

I am,

Very truly yours,
DANIEL CASEY
Director

---

24 Commerce Street,
December 20th, 1937.

Hon. Daniel J. Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey.

Dear Director Casey:

I called at your office this morning at 11:30 a. m., as you requested, in order to obtain your decision with regard to the application which I made on behalf of the American Civil Liberties Union for a permit to hold a public assembly in a public place in Jersey City. Lieutenant Daly handed me your letter addressed to me, dated December 20th, 1937, in which you asked me to advise you what is the purpose of the meeting and who are the persons who will address the meeting. In my letter of application, dated December 17th, I advised you that the purpose of the meeting was to discuss Civil Liberties, and that various prominent speakers would address the public on that subject. Since you seem to desire more particulars concerning the nature of the meeting, please be advised that the purpose of the meeting

is to petition the Mayor and other responsible officials for the exercise of the rights of free speech, free press and other civil liberties. More particularly also, the speakers will be Congressman Maverick, Congressman Jerry O'Connel, Congressman Allen and Morris L. Ernst. When I was handed your letter this morning by Lieutenant Daly, I asked Lieutenant Daly whether I could see you personally so that I could give you this additional information. Lieutenant Daly advised me that it would not be possible for me to see you personally today. He did say that I could probably see you personally tomorrow at 11:30 a. m. in the morning.

In my letter of application dated December 17th, I informed you that it was desired to hold this meeting on any of the following evenings, namely, Monday, December 20th, 1938, Tuesday, December 21st, 1938, Wednesday, December 22nd, 1938, or Thursday, December 23rd, 1938. Because of the delay in obtaining the permit, it now becomes impossible to hold the meeting on any one of those evenings and it will be necessary to postpone same to the following week. Any evening except Friday evening next week, which you will designate for said meeting, will be agreeable. Also because of the delay in obtaining the permit for the meeting, it may become necessary to substitute one or two other speakers in place of some of the speakers originally scheduled. In that event, sufficient advance notice thereof will be given by you.

Will you kindly advise me as quickly as possible, whether the permit applied for will be issued by you, and will you also kindly advise me what evening next week will be agreeable to you for said meeting, and will you also kindly advise me whether the meeting may be held on the steps and plaza in front of the Court House or, if this place is not available, will you kindly designate any public park or any public plaza in the City of Jersey City for said purpose.

Awaiting your advices, I am

Very truly yours,

SLR:BN

SAMUEL L. ROTHBARD

DEPARTMENT OF PUBLIC SAFETY
CITY HALL
JERSEY CITY, N. J.

DANIEL CASEY
Director
WALTER M. DALY
Secretary to the Director

EDWARD A. FLAHERTY
Deputy Director
THOMAS H. HOPKINS
Secretary to the
Deputy Director

December 22, 1937.

Samuel L Rothbard, Esq.,
24 Commerce Street,
Newark, New Jersey.

Dear Sir:

I acknowledge receipt of your letter of the 20th inst. in answer to my letter to you of even date, requesting you to furnish me certain information regarding an application you, by letter dated December 17, 1937 made on behalf of the American Civil Liberties Union for a permit to hold an open air public assembly on the steps and plaza in front of the Court House, located in Jersey City, or in case the steps and plaza in front of the Court House are not available then for a permit to conduct a meeting in any public park or in any public plaza whatsoever, which I may designate in the City of Jersey City.

In my letter to you of December 20th, 1937, I requested you to let me know what is the purpose of the meeting and who are the speakers who will address the meeting. You informed me by the letter hereby answered that the purpose of the meeting is to petition the Mayor and other responsible officials for the expression of free speech, free press and other civil liberties. Since these rights and these other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated.

You further inform me that on account of the delay in obtaining the permit it may become necessary to substitute one or two other speakers in place of some of the speakers originally scheduled. Will you please let me know who is the substitute speaker or who are the substitute speakers whom you intend to have take the place of the speakers mentioned in your letter.

I acknowledge receipt by registered mail this morning of your undated letter referring to your application for the permit above mentioned. I note your statement which reads: "Of course you realize that I intended to say in each instance *1937* instead of *1938*." I commend you for your accuracy and regret that the delay in this matter has been due to your evident evasiveness and unwillingness to answer the inquiries I submitted to you.

Very truly yours,

DANIEL CASEY
Director

December 23, 1937.

Hon. Daniel J. Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey.

Dear Sir:

The Hudson County Organizing Committee of the C. I. O. desires to hold an open air meeting in Jersey City, at any public place within a reasonable distance from the center of the city which you may assign for such meeting. James A. Hamill, Esq., your corporation counsel, has ruled that a permit is required for such meetings under an ordinance of Jersey City, and this application for a permit is therefore addressed to you.

The purpose of the meeting, to which the public will be invited, is to petition the Board of Commissioners of Jer-

sey City to modify Jersey City's leaflet distribution ordinance and its ordinance on public meetings, and to take appropriate action against intimidation by certain officers of your city of owners of halls who, but for the fear of incurring official hostility, would be willing to rent their premises for meetings of the Hudson County Organizing Committee.

The permit is requested for the evenings, between 8 and 10 p. m., of either Wednesday, December 29, or Thursday, December 30, 1937.

The meeting will be addressed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri, and John Kiesler.

I would appreciate receiving the permit by return mail since, as you understand, it will require several days advance notice properly to complete arrangements for the meeting.

Very truly yours,

SPAULDING FRAZER

DEPARTMENT OF PUBLIC SAFETY

City Hall

Jersey City, New Jersey.

December 27, 1937

Mr. Spaulding Frazer,
Counsellor at Law
744 Broad Street
Newark, New Jersey

Dear Sir:

I am in receipt this morning, December 27th, of your letter requesting a permit to hold an open air meeting for the evenings, between 8.00 and 10.00 p. m., of either Wednesday, December 29th, or Thursday, December 30th, 1937, the meeting to be held in Jersey City at any public place within

a reasonable distance from the center of the City which I may assign for such meeting.

I shall, as required by ordinance, make prompt investigation of all of the facts and circumstances pertinent to your application to hold this meeting before deciding whether it shall be proper for me to refuse or grant the issuance of a permit therefor..

I am,

Very truly yours,

Daniel Casey
Director

---

24 Commerce Street
0885
December 28th, 1937.

Hon. Daniel Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey.

Dear Director Casey:—

I herewith acknowledge receipt of your letter of December 22nd, 1937.

I have taken up with my client, the American Civil Liberties Union, the subject matter of your letter, and after discussion with my client, herewith desire to give you the following further information.

My client informs me that at this time, it feels no need of taking issue with you and debating with you through correspondence, whether or not any rights and civil liberties have been "infringed, restricted or violated" in the City of Jersey City. It is the opinion of my client that it conceives it has the right to express its opinion with reference to the violations of rights and civil liberties at a public meeting in Jersey City and to request persons at such a meeting to join with it in whatever action the meeting may decide to

take, by way of petition to the Mayor and the other city officials of Jersey City. If, at such a meeting, such a petition materializes, upon the presentation of that petition to the city authorities it would then be proper to discuss with the city officials the matters of fact alluded to in the petition with respect to violations of civil liberties.

My client, in making its application to you for a permit to conduct a meeting, is mindful of and asks you to bear in mind that portion of the New Jersey State Constitution which states that every person "Shall have the right to freely publish and declare his sentiments on all subjects." Of course, you are aware of the other constitutional provisions which allow people to assemble peacefully for the purpose of petitioning for redress of grievances. We further would like to call your attention to the able statement rendered by Justice Kalisch on behalf of the New Jersey Supreme Court in the case of State vs. Butterworth, (104 N. J. L. 43, 139 At. 161) in which the late learned Justice said, "the right of the people to meet in public places to discuss in open and public manner all questions affecting their substantial welfare, and to vent their grievances, to protect against oppression, economic or otherwise, and to petition for the amelioration of their condition, and to discuss the ways and means of attaining that end, were rights confirmed and guaranteed them by the Magna Charta, Petition of Right and the Bill of Rights, the mainstay of the British Constitution, and the bases of both our federal and state Constitutions." Surely such free expression as is allowed by our law does not contemplate or authorize a prior police censorship of the matter intended to be discussed at the meeting. My client is aware that it will be liable for any abuse of its rights. It asks me, however, to give you the assurance that the assembly will be entirely lawful in respect to the subject matter of the discussion and the manner in which it is conducted.

My client further informs me that with reference to the persons scheduled to speak at said meeting, upon rechecking, it finds that there will be no need for any substitute

speakers. The speakers who will address said meeting will be those mentioned in my letter of December 20th to you, namely, Congressman Maverick, Congressman Jerry O'Connell, Congressman Allen and Morris L. Ernst. However, may I call your attention that there is no warrant in law for any declaration in advance to police authorities as to the names of the persons who are scheduled to address a meeting. You will, of course, admit that the identity of the person makes no difference. It is the subject matter alone which may be subject to scrutiny, to see if it contains any matter prohibited by law.

I cannot agree with you that I have been, in any way, evasive or unwilling to answer any of your inquiries as suggested in your letter of December 22nd. Isn't the delay really due to your personal unwillingness to grant the permit in question? I again assure you that my client has been quite frank in this matter and intends to remain so. May I further advise you, at this time, that because of the delay so far, I would like the date for holding the meeting to be fixed some time in the week of January 3rd, and that you give me sufficient notice of your authorization so as to enable me to prepare for the same.

Any evening during the week commencing January 3rd, 193[illegible], which you will designate will be agreeable to my client for the time of said meeting. My client desires to conduct said meeting either on the steps and plaza in front of the Court House or on the steps and plaza in front of the City Hall, or in any public park, public plaza, public street or public place whatsoever which you may designate in the City of Jersey City. Will you, therefore, designate which evening next week and which public place the meeting may be held and grant the permit to my client for the same, with all possible dispatch.

Very truly yours,

SAMUEL L. ROTHBARD

SLR:BN
REGISTERED MAIL
RETURN RECEIPT REQUESTED

DEPARTMENT OF PUBLIC SAFETY
City Hall
Jersey City, N. J.

December 30, 1937.

Spaulding Frazer, Esq.,
744 Broad Street
Newark, New Jersey

Dear Sir:

I hereby answer your letter of December 23, 1937, addressed to me as Director of Public Safety, in which you make application for a permit to hold an open air meeting in Jersey City, which meeting will, according to you, be addressed by Congressman Jerry O'Connell, Roger N. Ba'dwin, William J. Carney, Al. Barkin, Sam Macri and John Kiesler.

On receipt of your letter, I sent you a communication, dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all of the facts and circumstances pertinent to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain Veterans' organizations of Jersey City, protesting against the granting of a permit to Roger N. Baldwin or to any members of the group he represents, to hold a meeting. The letter demanded that I withhold action on your application. I attach a copy of the Veterans' letter to this communication.

On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over three thousand persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of the permit. Violent disorder was threatened on the part of the veterans in case the meeting was held. Announcements were made from the floor—and these announcements had the approval of the meeting—

that if I should refuse to honor the Veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the Veterans at the meeting.

The Chamber of Commerce, representing the business interest of Jersey City, have gone on record against the granting of this permit.

The Central Labor body of Hudson County has gone on record against the granting of this permit.

Other bodies of citizens have opposed it, and individuals of influence in the community have protested to me against the holding of the meeting. Other facts and circumstances pertinent to your meeting, in addition to those herein called to your attention, convince me that the granting of the permit you request would lead to riots, disturbances and disorderly assemblage.

Therefore, I hereby refuse to issue the permit for an open air meeting requested by you in your letter of December 27, 1937, and my refusal is for the purpose of preventing riots, disturbances and disorderly assemblage.

Very truly yours,

Daniel Casey
Director

COMMITTEE OF VETERANS OF JERSEY CITY
921 BERGEN AVENUE
Jersey City, N. J. December 27, 1937

Hon. Daniel Casey,
Department of Public Safety,
Jersey City, N. J.

Dear Commissioner:

We understand from the newspapers that there is pending before you now an application for a permit to hold an open air public meeting in this City.

Among the speakers listed for the meeting is one Roger N. Baldwin, whose record was published in this afternoon's newspapers. In that record we find a conviction by a United States Court for draft dodging and a prison sentence of one year in the Essex County Penitentiary. We consider any man convicted of this crime to be thoroughly un-American in his principles and unworthy of receiving any consideration at the hands of the City Officials, at least to the extent of granting him permission to speak in this City at a public meeting.

We hereby protest against the granting of the permit to Roger N. Baldwin, or to any members of the Un-American group he represents, irrespective of what they claim to be the purpose of their meeting. We demand that you withhold action on this application.

The reason for requesting delay is that we wish to assemble in a body at the Jersey City Armory on Tuesday, tomorrow evening, in order that we may prepare and have adopted by the full membership of all the Veterans' organizations in Jersey City, resolutions of protest against allowing this "slacker", or any of his type, to appear publicly in Jersey City, whose citizens are devoted to American principles and the upholding of our American Constitution.

Please give us a prompt answer to this letter.

Very truly yours,

CHARLES A. PETERSON
Past State Commander
V. F. W.

WILLIAM E. MALINKA
American Legion

GEORGE A. REILLY
Adjustant, Jersey City
Post A. L.

DAVID A. NIMMO
Past Commander, Hudson
County, Amer. Legion

LOUIS F. J. BORGERS
Commander, Quinn Post,
American Legion

HUGH A. KELLY
Commander, Jersey City
Post, Amer. Legion

WHEREAS, there is now pending before the Director of Public Safety of Jersey City, Daniel Casey, an application for an open air meeting, to be held in Jersey City, at which meeting one Roger N. Baldwin in scheduled to speak, and

WHEREAS, the said Roger N. Baldwin, on October 30, 1918, was convicted in the United States District Court for the Southern District of New York, before the Honorable Julius Mayer, United States District Court Judge, for draft dodging during the World War, and sentenced to a year in the Essex County Penitentiary, which sentence he served, and

WHEREAS, this same Roger N. Baldwin was also convicted on March 30, 1925, before Judge Delaney in the Passaic County Court of Special Sessions for "Unlawful Assemblage," by reason of his Communistic activities, and

WHEREAS, in his testimony before the Fish Congressional Committee he did testify that force, violence and murder may be resorted to for the overthrow of government, his testimony being as follows:

The Chairman: Does your organization uphold the right of a citizen or alien—it does not make any difference which—to advocate murder?

Mr. Baldwin: Yes.

The Chairman: Or assassination?

Mr. Baldwin: Yes.

The Chairman: Does your organization uphold the right of an American citizen to advocate force and violence for the overthrow of the Government?

Mr. Baldwin: Certainly, in so far as mere advocacy is concerned.

The Chairman: Does it uphold the right of an alien in this country to urge the overthrow and advo-

cate the overthrow of the government by force and violence?

Mr. Baldwin: Precisely on the same basis as any citizen.

The Chairman: You do uphold the right of an alien to advocate the overthrow of the government by force and violence?

Mr. Baldwin: Sure; certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited.

WHEREAS, the same Roger N. Baldwin is now the leading advocate of the C. I. O. movement; and

WHEREAS, the C. I. O., in permitting this man to be its spokesman stands accused of condoning his un-Americanism and Communistic leanings, and the C. I. O. should be condemned for its Un-American tactics, and

WHEREAS, the Veterans here assembled, including members of The American Legion, The Veterans of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish-American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars and United Spanish War Veterans, of Jersey City are of the unanimous opinion that the presence of Roger N. Baldwin and his Communistic associates upon a public platform in the streets of Jersey City would be an insult to them and will undoubtedly result in serious disorders which would be against the best interests of our city, and

WHEREAS, the Veterans of Jersey City have heretofore protested the granting of this permit for the purpose of permitting this man to speak upon the public streets of our City, and

WHEREAS, the Veterans of Jersey City have assembled, including members of The American Legion, The Veterans

of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish-American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars, United Spanish War Veterans, at a special meeting called for the purpose of determining what recommendation should be made to the Director of Public Safety in regard to the granting of this permit, Now, THEREFORE, BE IT

RESOLVED by the Veterans of Jersey City, including members of the American Legion, Veterans of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish-American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars, United Spanish American War Veterans, that we do hereby oppose the granting of a permit which would permit the said Roger N. Baldwin and the persons with whom he is associated, all of whom are engaged in Communistic activities, to appear upon a public platform in the streets of our City, AND BE IT FURTHER

RESOLVED that we request the said Daniel Casey, Director of Public Safety, to refuse and deny the application made for such a permit, AND BE IT FURTHER

RESOLVED, that we now record our firm opposition and protest against allowing this slacker and his Communistic associates to appear publicly in Jersey City, whose citizens are devoted to American principles and the upholding of our American traditions, AND BE IT FURTHER

RESOLVED, that we consider a man convicted of the crime of evading the draft to be thoroughly Un-American in his principles and unworthy of receiving any consideration at the hands of public officials, especially the right to speak from a public platform in the streets of Jersey City, and that we also consider that any organization which permits

this man to be associated with them is also unworthy of any consideration on the part of public officials and that they should not be given the right to use our public streets for the purpose of spreading Communistic and Un-American doctrines, AND BE IT FURTHER

RESOLVED, that while the Veterans at this meeting assembled are in complete agreement with the right of any group of working men to organize for the purpose of obtaining decent, fair and reasonable wages and working conditions, we are utterly opposed to and hereby go on record as condemning the Communistic C. I. O. with its record of armed mobs, massed intimidation of peaceful workers, seizure of private property, defiance of courts, bloodshed and death to those who oppose its doctrines and that tactics so subversive of government by law places its agitators beyond the pale of the law's benefits and protection, AND BE IT FURTHER

RESOLVED, that our action in passing this set of resolutions is in complete accord and agreement with the Resolution passed by the American Legion at its National Convention in New York City in September, 1937, wherein they pledged continued opposition to Communism and to American citizens or aliens who advocate the overthrow of our government by force, fraud or violence.

I hereby certify this is a true copy of a Resolution passed at a meeting of Veterans held in the Jersey City Armory on Dec. 28, 1937.

HUGH A. KELLY,
Chairman.

January 3, 1938.

Honorable Daniel J. Casey,
Director of Public Safety,
Jersey City, New Jersey.

Dear Sir:

I wish to thank you for your very frank letter of December 30th. The fact that I received it the day after the last date for which permission was asked, was, as you doubtless thought, of no significance in view of your letter of December 27th, in which you informed us of your intended "investigation of all the facts and circumstances pertinent to" my application. With the passing of the meeting date, I had construed silence as dissent.

Your letter, however, is very illuminating as to the nature of the investigation undertaken by you. Such an investigation concededly takes time. Even a perfectly functioning organization requires at least one day to foment a mass-meeting. I congratulate you on the apparent success of the demonstration, if you consider the accomplishment important. I do not. It solves none of the problems confronting us, and as I see it, points with pride to the apparent inability of Jersey City authorities, with the largest per capita police force in the country at their disposal, to maintain order against the threatened mob violence of unruly elements who threaten direct action if the authorities protect, in the exercise of their constitutional rights, persons in whose opinions the mob does not concur.

The purpose of the proposed meeting was to petition your Commission (1) to modify certain city ordinances, and (2) to prevent owners of halls from intimidation by your police officers in the rental of their halls. That your supporters disagree with the opinions of Mr. Roger N. Baldwin, or the economic philosophy of the Committee for Industrial Organization seems beside the point. What seems, however, very important is that you, a public officer, sworn to enforce the law, should admit your incapacity to do so

and your fear that should you attempt it "veterans" would turn Jersey City over to the mercies of a riotous mob. Nowhere do I see any statement that the applying petitioners or their supporters will be disorderly, but it is clear from the voluminous matter attached to your letter in justification and from the reports of the "mass-meeting" that the disorderly conduct feared would have been on the part of your supporters. Really, Mr. Commi ioner, you should have them in better control. Your Mayor has recently spoken of his "efforts to obstruct this lawless element whose only effort is to crush by terrorism", and of a "campaign of violence and terrorism". Is it possible he had prophetically in mind the "mass-meeting" of Tuesday? Or is it that you tolerate mobs instructed to do your bidding and heroically suppress and oppress by public and private force all individuals who disagree with or oppose you? This, to my mind, is the issue involved, not what may be the opinions, philosophical or economic, of those who are brave enough in Jersey City to disagree with you, or shall I say more realistically, with Mayor Hague. On this issue I am ready to join with you.

Very truly yours,

Spaulding Frazer

SUBPŒNA AD RESPOND.

(Filed January 15, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,
FOR THE DISTRICT OF NEW JERSEY.

To FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH, Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Defendants,

Greeting:

WE COMMAND YOU, that you appear in manner and form required by law in our District Court of the United States for the District of New Jersey, as a Court of Chancery, within twenty days from the date of service hereof upon you, to answer to a bill of complaint exhibited against you in our said court by Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union plaintiffs and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

WITNESS the Honorable William Clark, Judge of
(Seal) said court, this seventh day of January, 1938.

GEORGE T. CRANMER,
Clerk.
By E. T. PETTENGILL,
Deputy.

MEMORANDUM.

The defendant is to file his answer or other pleading in the suit, in the clerk's office, Trenton, N. J., on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

Served the within subpœna on Frank Hague individually and as Mayor of Jersey City, Daniel J. Casey individually and as Director of Public Safety of Jersey City, Harry Walsh individually and as Chief of Police of Jersey City all personally and on the Board of Commissioners of Jersey City by delivering to and leaving with City Clerk Eugene Estle personally at Jersey City, all in the District of New Jersey on the eleventh day of January, 1938, at the same time showing each person the original with the seal of the Court attached and informing each person of its contents.

WM. P. MCDERMITT,
U. S. Marshal.
By JOHN A. KENNY,
Deputy.

NOTICE OF MOTION FOR BILL OF PARTICULARS.

(Filed January 29, 1938.)

To: Spaulding Frazer, Solicitor of Plaintiffs,
744 Broad Street, Newark, New Jersey.

SIR:

PLEASE TAKE NOTICE that on Monday, January 31, 1938, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I will move for an order for a bill of particulars based on the motion and affidavit of Joseph C. Glavin, true copies of which are hereby served upon you.

January 28, 1938.

JAMES A. HAMILL,
Solicitor of Defendants.

MOTION FOR BILL OF PARTICULARS.

(Filed January 29, 1938.)

Now comes Frank Hague, individually, and as Mayor of Jersey City, Daniel J. Casey, individually, and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, the defendants in the above-entitled cause, and move this Court, pursuant to provisions of Equity Rule No. 20, that the plaintiffs be ordered to furnish further and better particulars of the matters stated in the bill of complaint filed on the seventh day of January, 1938, in the following respects:

WITH RESPECT TO PARAGRAPH 8 OF THE BILL OF COMPLAINT:

1. For how long a period, prior to November 29, 1937, is it alleged that the defendants denied to the plaintiffs the right to hold any lawful meetings within the territorial limits of Jersey City, Hudson County, State of New Jersey?

2. On what dates and to which of the defendants were the applications for permits to hold such meetings made?

3. By whom, on behalf of the plaintiffs, were such applications for meetings made?

WITH RESPECT TO PARAGRAPH 9 OF THE BILL OF COMPLAINT:

1. Give the name of the parties to the alleged unlawful plan and conspiracy.

2. Give the name or names of the persons whom it is alleged informed owners of meeting halls in the City of Jersey City that a permit was required from the Chief of Police under the ordinance marked "Schedule A" before any meeting organized by said plaintiffs on behalf of the CIO could be held.

3. Give the names of the defendants alleged to have intimidated the owners of meeting halls against renting

such halls to said plaintiffs, or their representatives, as alleged in paragraph 9 of the bill of complaint.

4. Give the dates on which it is alleged such owners of meeting halls were intimidated.

5. Give the names of the owners of such meeting halls and the location of said meeting halls.

WITH RESPECT TO PARAGRAPH 10 OF THE BILL OF COMPLAINT:

1. Give the location of the meeting place or places which it is alleged the American Civil Liberties Union attempted to rent for the purpose of holding meetings and the dates upon which such attempts to rent were made.

2. State the name of the person on behalf of the American Civil Liberties Union who attempted to rent such meeting place or places.

WITH RESPECT TO PARAGRAPH 11 OF THE BILL OF COMPLAINT:

1. Give the dates on which it is alleged that the defendants and their subordinates physically interfered with picketing by any of the plaintiffs herein.

2. Give the names of the plaintiffs so interfered with.

WITH RESPECT TO PARAGRAPH 12 OF THE BILL OF COMPLAINT:

1. State the date or dates on which the defendants are alleged to have announced that the plaintiff, CIO, the other plaintiffs affiliated with the CIO, and all other persons affiliated with the CIO were forbidden to distribute circulars, leaflets or any other printed matter on the streets of Jersey City.

2. Give the name or names of the defendants alleged to have made such an announcement.

WITH RESPECT TO PARAGRAPH 14 OF THE BILL OF COMPLAINT:

1. Give the names of the persons known to be engaged in organized activities, on behalf of the CIO whom it is

alleged were physically interfered with by defendants, as stated in paragraph 14 of the bill of complaint.

2. Give the name or names of defendants alleged to have made such physical interference.

WITH RESPECT TO PARAGRAPH 18 OF THE BILL OF COMPLAINT:

1. On what dates, by whom, and in what manner were the plaintiffs prevented from "using the streets of the city in the same manner as others have been and are permitted to use them," as alleged in paragraph 18.

And the defendants further move that an order be entered that the plaintiffs file such particulars and serve upon the defendants, or their attorney, a copy of the same within ten days after the entry of said order.

Dated: January 28, 1938.

JAMES A. HAMILL,
Solicitor of Defendants.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } *ss.:*

JOSEPH C. GLAVIN, of full age, being duly sworn on his oath, according to law, deposes and says:

I am the attorney in charge of the within cause, on behalf of the defendants and have read the bill of complaint filed by the plaintiffs herein.

The particulars sought on the motion herein are necessary in order that the defendants may intelligently and properly plead, answer, or demur to the allegations in the said bill of complaint and for the further reason that without such particulars the defendants may be subject to surprise at the hearing of said cause.

JOSEPH C. GLAVIN.

Subscribed and sworn to before me, this twenty-eighth day of January, 1938.

JOHN J. EVANS,
Notary Public of N. J.

Service of a copy of within motion for bill of particulars is hereby acknowledged this twenty-eighth day of January, 1938.

SPAULDING FRAZER,
Solicitor for Plaintiffs.

ORDER REQUIRING BILL OF PARTICULARS.

(Filed February 9, 1938.)

This cause came on to be heard at this term on the motion of the defendants herein, for an order directing plaintiffs to furnish further and better particulars on certain matters stated in the bill of complaint, supported by the affidavit of Joseph C. Glavin, verified the twenty-eighth day of January, 1938, and was argued by counsel and, thereupon, on consideration thereof, it was

ORDERED, ADJUDGED and DECREED, as follows:

1. The said motion be and same hereby is granted as to question 1, with respect to paragraph 10 of the bill of complaint and is denied with respect to all of the remaining questions.

It is further ORDERED, ADJUDGED and DECREED that the plaintiffs serve their answer to the foregoing question on the defendants, or their attorney, within five (5) days and that the defendants have five (5) days from and after service upon them or their attorney of the answer to the aforesaid question, to plead or answer to the bill of complaint filed herein.

WILLIAM CLARK,
Judge, United States District Court.

Dated February 9, 1938.

PROOF OF SERVICE.

(Filed February 17, 1938.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX } *ss.:*

JOSEPH M. JACOBS, of full age, being duly sworn according to law upon his oath, deposes and says:

I am an attorney at law of the State of New Jersey, and I am employed in the law offices of Spaulding Frazer, solicitor of plaintiffs in the above-entitled cause, and on February 14, 1938, at 3:15 P. M., I served the annexed bill of particulars upon James A. Hamill, Esq., solicitor of defendants, by leaving a copy with John J. Evans, Esq., the person then in charge of the office of James A. Hamill, City Hall, Jersey City, New Jersey.

JOSEPH M. JACOBS.

Sworn and subscribed to before me this fourteenth day of February, 1938.

CECILE HUEBNER,
(Seal) *A Notary Public of N. J.*

BILL OF PARTICULARS.

(Filed February 17, 1938.)

To James A. Hamill, Esq., Solicitor for Defendants:

The following is a bill of particulars, furnished in accordance with the directions of an order made herein by the Honorable William Clark, Judge of the United States District Court, on February 9, 1938, as to Question 1 with respect to paragraph 10 of the bill of complaint:

During December, 1937:

Young Men's Christian Association Hall, located at 654 Bergen Avenue.

Young Women's Christian Association Hall, located at 270 Fairmount Avenue.

Young Men's Hebrew Association Hall, located at 604 Bergen Avenue.

Methodist Church, located on Summit Avenue.

Lutheran Church, located on Hudson County Boulevard.

Methodist Episcopal Church, located on Magnolia Avenue.

Masonic Temple, located on Fairmount Avenue.

February 4-6, 1938:

White Eagle Hall, located at 335 Newark Avenue.

Peoples' Palace, located at 380 Bergen Avenue.

National Hall, located at 187 Brunswick Avenue.

Fairmount Hall.

SPAULDING FRAZER,
Solicitor for Plaintiffs.

ANSWER OF FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY, the Defendants to the Bill of Complaint Herein.

(Filed February 19, 1938.)

To the Honorable the Judges of the United States District Court for the District of New Jersey:

For answer to the bill of complaint of the plaintiffs in the above-entitled cause, Frank Hague, individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, defendants above named say:

1. Answering the first paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

2. Answering the second paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

3. Answering the third paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

4. Answering the fourth paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

5. Answering the fifth paragraph of the bill of complaint, the defendants admit the allegations contained therein.

6. Answering the sixth paragraph of the bill of complaint, defendants deny the allegations thereof.

7. Answering the seventh paragraph of the bill of complaint, defendants deny the allegations thereof.

8. Answering paragraph eight of the bill of complaint, defendants deny the allegations contained therein and particularly deny the conclusions of law contained in the allegation "said plaintiffs charge that said ordinance is in violation of the Constitution of the United States on its face and as applied to said plaintiffs."

9. Answering the ninth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

10. Answering the tenth paragraph of the bill of complaint, defendants deny each and every allegation thereof.

11. Answering the eleventh paragraph of the bill of complaint, defendants deny each and every allegation thereof.

12. Answering the twelfth paragraph of the bill of complaint, defendants admit that there is an ordinance of the City of Jersey City, adopted January 22, 1934, regulating the distribution of leaflets, circulars and other printed matter upon the streets of Jersey City, and further admit that on or about November 29, 1937, the plaintiffs announced their intention to distribute circulars upon the streets of Jersey City, in violation of said ordinance and in defiance of the authorities of the City of Jersey City, and deny all of the remaining allegations thereof.

13. Answering the thirteenth paragraph of the bill of complaint, defendants admit that having been advised through the press and otherwise of the intention of plaintiffs to violate the ordinance referred to in paragraph 12

of the bill of complaint, and fearing serious disorder and riot, stationed policemen at the locations specified by the plaintiffs for the purpose of maintaining order and to prevent violation of the law, and further admit that the plaintiffs, or some of them, attempted to distribute circulars, contrary to the provisions of said ordinance and in other respects violated the laws of the State of New Jersey and, as a result, the individuals specified in the bill of complaint were arrested; and deny all of the remaining allegations thereof.

14. Answering the fourteenth paragraph of the bill of complaint, defendants deny each and every allegation thereof.

15. Answering the fifteenth paragraph of the bill of complaint, defendants admit the allegations thereof.

16. Answering the sixteenth paragraph of the bill of complaint, defendants admit that the plaintiff, American Civil Liberties Union (through its attorneys), applied for a permit under an ordinance of Jersey City, adopted April 15, 1930, for an open air public meeting and before defendants acted upon said application, the plaintiffs made a further application through a different attorney on December 23, 1937, for a permit for a similar meeting. Defendants further admit that this latter application was denied but deny that the refusal by defendants to hold the open air meeting was in violation of plaintiffs' rights and privileges as guaranteed by the Constitution of the United States, but was perfectly lawful under the ordinance referred to in the bill of complaint, a copy of which is attached thereto and marked Schedule "F"; and deny all of the remaining allegations thereof.

17. Answering the seventeenth paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief concerning the employment and duties of the individual plaintiffs, as alleged therein. As to the remaining allegations, such facts are immaterial to this cause and for that reason, defendants make no answer thereto.

18. Answering the eighteenth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

19. Answering the nineteenth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

20. Answering the twentieth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

21. Answering the twenty-first paragraph of the bill of complaint, defendants deny each and every allegation contained therein and further deny that the allegations of said bill of complaint present any Federal question.

22. Answering the twenty-second paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

23. Answering the twenty-third paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

24. Answering the twenty-fourth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

For a first, further, separate and distinct defense, defendants allege that the plaintiffs have an adequate, complete and speedy remedy at law for violation of their rights as alleged in the bill of complaint.

For a second, further, separate and distinct defense, to said complaint, defendants allege that the announcement by the plaintiffs of their invasion of the City of Jersey City, and subsequent carrying out of that announcement, involving violations of the law, were solely for the purpose of attempting to intimidate the police and authorities of the City of Jersey City and to create disorder, confusion and riot.

For a third, further, separate and distinct defense to the bill of complaint, defendants allege that the plaintiffs, by virtue of their own unlawful acts precluded themselves from the right to relief, if any existed, in a court of equity.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that the facts alleged in said bill of complaint are insufficient to constitute a valid cause of action in equity.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that the allegations in said bill of complaint stating that the several ordinances and statutes referred to therein are unconstitutional under the Constitution of the United States of America, are mere conclusion of law and, therefore, improperly pleaded.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants, Frank Hague, individually, Daniel J. Casey, individually, and Harry Walsh, individually, say that they are improperly joined as parties defendant in this suit.

For a further separate and distinct defense in point of law, arising upon the face of the bill of complaint herein, defendants say that the amount in controversy in this cause as to each plaintiff and against each defendant, does not exceed three thousand ($3000) dollars, exclusive of interest and costs.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that it is apparent from the face of said bill of complaint that the supposed grounds of jurisdiction of a Federal Court are frivolous, with no facts alleged sufficient to show or make it appear that any real or substantial Federal question is involved.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein,

defendants say that the only question of law involved is the alleged unconstitutionality of the several ordinances and statutes referred to in the bill of complaint and relied upon by the plaintiffs in support of their alleged constitutional rights which this Court will not assume jurisdiction to determine.

WHEREFORE, the defendants pray judgment that the bill of complaint of the plaintiffs be dismissed, with costs to the defendants.

Dated February 18, 1938.

JAMES A. HAMILL,
Solicitor for Defendants.

JOSEPH C. GLAVIN,
Of Counsel.

Service of a copy of the within answer is hereby acknowledged, this nineteenth day of February, 1938.

SPAULDING FRAZER,
Solicitor for Plaintiffs.

AMENDMENT BY WAY OF SUPPLEMENT.

(Filed June 10, 1938.)

Plaintiffs for their amendment to the bill of complaint herein by way of supplement respectfully show that:

After the filing of the bill of complaint herein defendants Frank Hague, Daniel J. Casey, Harry Walsh, the Board of Commissioners of Jersey City, and their employees, agents and servants continued, and are still continuing, against plaintiffs and others similarly situated, the practices, activities, plan and conspiracy referred to in paragraphs 8 to 20 inclusive of the original bill of complaint herein, in violation of the Constitution of the United States and the other statutes and laws referred to in said bill of complaint.

SPAULDING FRAZER,
Solicitor of Plaintiffs.

AFFIDAVIT OF MORRIS L. ERNST.

(Filed June 21, 1938.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } *ss.:*

MORRIS L. ERNST, being duly sworn, deposes and says:

I am an attorney at law duly admitted to practice in the courts of the State of New York. By the Court's leave, I have been associated of counsel with Mr. Spaulding Frazer, solicitor for the complainants, in the cause entitled *"Committee for Industrial Organization, et al. v. Frank Hague, et al.,"* now pending on trial in this court, and have actively participated in the trial of said cause.

This affidavit is submitted in support of a motion made by me in open court on June 17, 1938, and now renewed, to punish Frank Hague, one of the defendants in the cause and a witness therein called on behalf of the complainants, as and for a criminal contempt committed in the presence of the Court.

On June 10, 1938, Frank Hague took the witness stand. His direct examination was concluded on June 16, 1938. For the content of his testimony under direct examination the Court is respectfully referred to the record.

On June 17, 1938, Hague was taken in cross-examination by his counsel, Mr. John A. Matthews. During the course of said cross-examination, counsel proceeded to examine Hague by reference to various publications and newspaper articles which, according to Hague, he had read and considered and which had contributed to form his state of mind or mental attitude with respect to the complainants in the cause and others. The Court had ruled that such publications and articles could not be offered or referred to to prove the truth of the matters therein contained, but could be deemed pertinent and relevant solely as a means of showing Hague's state of mind.

The following question was then propounded to Hague by his counsel:

"Q. Now, Mr. Mayor, you made the statement in your testimony that the Communists were people who were trying to destroy the United States and destroy all religion. Have you any information about Senator McNaboe of New York, which together with that article which I show you now helped you to form that opinion which you gave to Mr. Frazer? A. I have. This covered school children."

This question and line of testimony were objected to by Mr. Spaulding Frazer on the ground (among others) that the newspaper article in question was dated June 10, 1938, and could not possibly have contributed *ante litem motam* to Hague's state of mind or mental attitude. While argument on the objection took place, Hague persisted in an attempt to give testimony. Finally the objection was sustained by the Court and Hague's remarks were ordered stricken out:

"The Court: Isn't it a fact that the McNaboe Committee made some report almost a year ago?

Mr. Matthews: They did not make any report. What the Mayor wants to say is that the McNaboe Committee organized—he wants to tell the Court what the situation was—I don't want to tell the Court his testimony, and it dealt with this proposition.

A. It dealt with school children, it dealt with that Morris Ernst stopped the investigation. The committee never met, the committee was never permitted to meet. I want to make the statement, I want to show the influence that the Communists has got in this country. I never heard of such a thing, that a committee can be silenced that is organized to investigate communism in the public school system and the institutions——

Mr. Frazer: If it please the Court, will you ask the witness to desist?

The Court: There is no evidence to that effect.

Mr. Frazer: Will you strike those remarks from the record, if it please the Court?

A. Do you mean to tell me I am not permitted to make a statement here concerning the prosecutor in this case?

Mr. Frazer: May I ask the Court that the witness do not make any more remarks and may I move that the remarks be stricken?

The Court: Yes.

Mr. Matthews: Do I understand that the Mayor is not to tell what the connection is between the children and the deprivation——

The Court: My ruling is that the newspaper article was published after the trial began. I therefore sustain the objection. You may have an exception."

After this exchange, the Court declared a luncheon recess. As Hague left the witness stand he gestured to various newspaper reporters present in court to accompany him to an adjacent room in the courthouse. When the reporters had assembled, Hague issued a statement substantially as follows (quoted from *The New York Times*, June 18, 1938, pp. 1 and 2):

"During the noon recess Mayor Hague called reporters into a room in back of the court and dictated a statement in which he said that the article Mr. Matthews had failed to get into the record was a clipping from a Boston newspaper 'concerning school children being forced into a Communist atmosphere.' Then he said that Senator John J. McNaboe of New York introduced a resolution in the New York Legislature last year which was unanimously adopted, and an appropriation made, providing for an investigation of 'Communist

and radical influences in the public schools of New York and public universities.'

'The committee never met, never selected a counsel, never spent one 5-cent piece of its appropriation,' the Mayor added. 'He was stopped by the influence of Morris Ernst from exposing conditions in the public schools. I say that when Communist leaders sway that type of influence the American people better be on guard. He (Mr. Ernst) is the master mind, going about the country telling about his influence.'"

It will be observed that the statement given to the press related specifically to the matters which the Court had ordered excluded and directed to be stricken out of the record. Moreover, it contained a grave charge reflecting upon Senator McNaboe and his colleagues on the committee of the New York State Senate, and a damaging, scurrilous and false attack upon me.

I was advised by reporters during the luncheon recess that Hague had made this statement, and upon being asked by reports what reply I desired to make, I said that I had no reply, as I preferred to try the case in court and not in the newspapers.

In my opinion, Hague's acts as hereinabove described constitute a criminal contempt of this Court. The statement issued by Hague was intended to and did receive nationwide publicity. It necessarily reached the attention of the Court. Thus Hague knowingly attempted to persuade the Court—it is unimportant whether he succeeded—by matters which the Court had specifically excluded from the cause as incompetent. The necessary purport of the statement was to embarrass and prejudice the fair conduct of the cause.

The motion to punish Hague for contempt was made by me upon the reconvening of Court after the luncheon recess as follows:

"Mr. Ernst: If your Honor please, I rise to move the Court on a matter of peculiar importance, and I

hereby move that you hold the witness Frank Hague in contempt of court for the following reasons and set of circumstances:

Evidence was excluded by your Honor in relation to one McNaboe. I was confronted a few minutes ago by members of the press who read to me what purported to be a statement which Frank Hague uttered to them in a conference called by him. The statement, if your Honor please, directed itself to the very facts which were denied admission in this case. But further, sir, that statement, as it was read to me by the members of the press at the conference, accused me, a member of the bar, of having wrecked a Senatorial investigation committee in the State of New York, of having been responsible for calling it off.

That means, if your Honor please, that I, not a member of the legislature, was instrumental, and it could only have been by nefarious means, in calling off all of the members, or a majority thereof, of a legislative committee of the State of New York.

Now, I am not concerned with the resentment that they may feel at the statement, but this is just the last step in a campaign of not trying this case in court.

May I add, your Honor, that the members of the press asked me if I wished to comment on the statement. I told them that I did, and I told them that our comment was that we were trying this case in a court of law and that our statements would be produced through witnesses on the stand before your Honor.

That statement of this witness at the conference which he called has been circulated to the press. We have a similar case on the same point of law now pending in the courts of the State of New York. I do not ask your Honor to pass on this contempt motion at this moment, I wish to brief the matter for you, and I refer you at this moment to a case now pending before Referee John Kirkland Clark, sitting by appointment

of a Judge of the Supreme Court of the State of New York, where it is charged by one of the attorneys before him that statements were issued by the other attorney or by the parties, I do not recall which, circulated in print, and that motion is now pending in that case. I therefore charge that contempt has been committed. I move that you hold the witness for contempt and I ask the opportunity of supplying a brief to you by Tuesday of next week.

The Court: I suppose you should file something in the form of affidavits or otherwise.

Mr. Ernst: I have this situation——

The Court: With the motion papers.

Mr. Ernst: May I call this to your attention: I do not know the law in the State of New Jersey with regard to the extent of the privilege of a reporter; it will be my affidavit that they read me the statement.

The Court: There is a Federal provision, I think, about contempt of court in Federal cour' Section 268 of the Code, not the United States Code Annotated, the Judicial Code, which covers contempt in criminal courts. My recollection with respect to witnesses or attorneys is that if they make any statement it has to be an attempt to influence the Court, I mean that is my recollection of the law, but I haven't looked it up recently.

Mr. Ernst: That may be a secondary question to which the cases, as I recall it, direct themselves, because that goes to the question of motive and the motive might have only been to put something in print in the newspapers, so that when the witness reads it again it can be claimed that he made up his mind on the strength of what he read in the newspapers.

Mr. Matthews: I object to that statement. I don't know anything about this that Mr. Ernst is informed about.

Mr. Ernst: May I say that I am informed that none of the counsel for the witness were present at the conference. I overlooked it.

Mr. Matthews: As far as reading it or anything of that sort, I think the Mayor can tell about it if he has had any conference.

The Witness: Am I permitted to answer?

The Court: Mayor Hague, you can answer the affidavits if they are filed.

The Witness: If I offended the Court I want to apologize to the Court; I done it with no intention of offending this Court, your Honor. I have the utmost respect for the Court.

Mr. Matthews: I know nothing about it.

A. It was a very important statement, your Honor, to the country. I felt that the Communists, to silence a committee that sets itself up to investigate Communism in public schools of the State of New York, and that they was silenced by that man, as I charge it, then I say it is a serious question for the country to know that the Communists can sway that type of influence.

The Court: You will file the memorandum.

. . . . . .

Mr. Ernst: Would you let me examine you on your statement that I caused a legislative committee of the State of New York not to do its duty?

The Witness: You are going to examine me. You will have a chance to examine me, and I am not afraid of you; you must understand that.

Mr. Ernst: All right. I will do it in due time.

The Witness: I have no fear when I am taking the side of the American people."

This Court may judge of the sincerity of Hague's assertion that "If I offended the Court I want to apologize to the Court; I done it with no intention of offending this Court, your Honor. I have the utmost respect for the Court." The Court may judge whether, under all the circumstances in the case, such an apology is sufficient to purge the defendant Hague's contempt.

All of which is respectfully submitted.

MORRIS L. ERNST.

Sworn to before me this twenty-first day of June, 1938.

JOSEPH M. JACOBS,
An Attorney at Law of New Jersey.

AMENDMENT TO DEFENDANTS' ANSWER.

(Filed June 23, 1938.)

The defendants hereby amend the answer heretofore filed by them in the hereinabove entitled matter by adding the following paragraphs to the said answer:

Defendants further answering say that their refusal to issue the permits for public meetings on the public streets, highways and property in Jersey City was in the proper exercise of the powers vested in them by the ordinances of Jersey City and the laws of the State of New Jersey; that said permits were denied after an investigation of all the facts and circumstances pertinent to said applications and in order to prevent riots, disturbances and disorderly assemblage; that the citizens of Jersey City, aroused by reason of the communistic and radical activity of the persons who or organizations which made the applications for the permits which were denied, protested against the issuance of the same, and realizing that to grant the permits would inevitably lead to riots, disturbances and disor-

derly assemblage, the defendants were justified in denying and were under a duty to deny the said permits; and that said defendants were obliged to consider the hostile attitude of its citizens towards communists and radicals whose purposes, aims and ideals are contrary to and subversive of American institutions and traditions and of the American form of government.

Defendants further answering say that the constitutionality of the ordinance under which the defendants acted and the validity of the action thereunder is now being reviewed by the New Jersey Supreme Court in mandamus proceedings brought by Norman Thomas, whose application for a public meeting on the public streets of Jersey City was denied, which Court has complete jurisdiction to determine the said questions involved and this Court should not take jurisdiction of the same subject matter especially by reason of the fact that the plaintiffs have a complete and adequate remedy in the law courts of this State wherein said action is now pending.

JAMES A. HAMILL,
Solicitor for Defendants.

FURTHER AMENDMENT TO DEFENDANTS' ANSWER.

(Filed August 1, 1938.)

The defendants hereby further amend the answer heretofore filed by them in the hereinabove-entitled matter by adding the following paragraph to said answer:

Defendants further answering say that this Court should not grant the plaintiffs the equitable relief prayed for because they come into this court with unclean hands in that instead of resorting to the orderly processes of the law in challenging the validity or constitutionality of the ordinances of the City of Jersey City, the said plaintiffs took the law into their own hands; they disregarded the said ordinances and violated the same causing disorder in the community and created a situation fraught with grave danger, unrest and damage to its citizens and their property.

JAMES A. HAMILL,
Attorney for Defendants.

OPINION.

(Filed October 27, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union,

Plaintiffs,

v.

Frank Hague, Individually and as Mayor of Jersey City, Daniel J. Casey, Individually and as Director of Public Safety of Jersey City, Harry Walsh, Individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City.

Defendants.

Appearances:

SPAULDING FRAZER, ESQ., attorney for plaintiffs; DAVID STOFFER, ESQ., of the New Jersey Bar, MORRIS L. ERNST, ESQ., LEE PRESSMAN, ESQ., BENJAMIN KAPLAN, ESQ., HARRIET F. PILPEL, ESQ., of the New York Bar, of counsel.

JAMES A. HAMILL, ESQ., attorney for defendants; JOHN A. MATTHEWS, ESQ., CHARLES HERSHENSTEIN, ESQ., EDWARD J. O'MARA, ESQ., JOSEPH C. GLAVIN, ESQ., CHARLES A. ROONEY, ESQ., of counsel.

CLARK, *D. J.*

This case seeks the solution of a problem inevitable and inherent in a democratic form of government. Upon its sound solution the preservation of that form of government

may well be said to depend. For that reason we repeat the hope, expressed at the trial, that this opinion will prove only an indistinct sign-post on the road to the ultimate wisdom of the highest tribunal. We spoke of seeking a solution advisedly. We are going to assume, or should we say presume, that both parties to the litigation are convinced that their opposing points of view are in the interest of that democracy we are sure both believe in. Any contrary assumption, or presumption, depends for its validity upon phychological factors difficult of determination and of no help in arriving at a conclusion. So we disregard the spasmodic spirit evinced by such respective trial amenities as "tinpot Hitler" and "busybodies" (as the merchant said of the fire engines). As in many matters of political science there exists a necessity for balance and a consequent inability to agree as to the proper adjustment of the scales. The committee which prepared the learned and interesting discussions in anticipation of the recently held convention for revision of the New York Constitution puts it thus:

> "Quite apart from the previous considerations, there is an inherent difficulty in defining the proper scope of freedom to speak, to publish and to assemble. The difficulty arises from the fact that speech, publication and assembly of some sorts, occurring under some circumstances may lead to undesirable consequences. These consequences may be sufficiently undesirable and the probability that they will occur sufficiently high to justify action by the State which is addressed to preventing the speech, publication or assembly which creates such danger."
>
> p. 151.
>
> . . . "The difficulty lies in the multiple variations that may occur between the extremes."
>
> p. 152.
>
> Problems Relating to Bill of Rights and General Welfare, New York State Constitutional Convention Committee, Vol. 6.

and similarly Professor Chafee, *Freedom of Speech* and Eliel *Freedom of Speech During and Since the Civil War*, 18 American Political Science Review, p. 712

> "The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for, as Bagehot points out, once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom."
>
> Chafee, p. 34.
>
> "There is also a social interest in free speech as a guaranty of political efficiency and an instrument of progress; and this social . . . Another doctrine for the interpretation of the use abuse theory is the test of clear and immediate danger, in determining which is suggested, not only the words uttered, but the situation in which they are uttered must be considered. . . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command."
>
> Eliel, p. 734-735.

We think the mere statement of the question acquits our opening sentences of pompousness or exaggeration. The City of Jersey City, through its appropriate elective officials the Mayor and Commissioner of Public Safety, has adopted a deliberate policy. It has not been necessary to seek for

proof of that policy in the usual unsatisfactory process of weighing the conflicting testimony of witnesses or in the even more unsatisfactory study of counsel's conflicting interpretations of that testimony. In fact, the only exception to this pleasant posture of the litigation lies in the rather unsuccessful attempts of counsel to cut the cloth of some of that testimony to their conception of the law. We say this with a full appreciation of the difficulty inherent in reconciling the views of a positive city official with the pronouncements of a powerful Supreme Court.

That deliberate policy of Jersey City is this. Certain individuals and groups of individuals (whether incorporated or not), the plaintiffs in this case, are alleged to be the kind of persons and to hold the kind of opinions to which the people of Jersey City or a majority of them are, to use a current and expressive medical term—allergic. In the practice of preventive medicine, so to speak, these individuals and groups are not permitted to come in contact with the body (politic) in which they produce the undesirable symptoms of "riot, disturbance and disorderly assemblage" (the words of the contested ordinance). In two particulars this medical metaphor breaks down. The effect of mustard, let us say, upon the human body lies in the field of physiology, an exact science, and is certain. Mustard is not protected by the Constitution. The effect of opinion upon the human mind lies in the field of psychology, not an exact science, and is not certain. Opinion is protected by the Constitution. That breakdown or difference precludes the accurate answer implicit in all exact science and requires the writing of this opinion.

An analysis of the prescription of Drs. Hague (the Mayor) and Casey (the Commissioner of Public Safety) indicates five ingredients (not necessarily in equal parts for one at least telescopes the rest). The individuals or groups diagnosed as giving rise to the alarming symptoms aforesaid are not allowed to (1) be in Jersey City, (2) express their opinions in Jersey City either to (a) those who signify

their willingness to receive them by (1) accepting circulars or (2) going to privately owned meeting places or (b) those who receive them involuntarily (1) in the form of speeches made in public places or (2) placards displayed on public streets.

To turn from medicine to law. The City of Jersey City has prevented these plaintiffs, both singly and in groups, from being, moving about, and communicating their thoughts within the city limits. Do they have legally enforceable rights corresponding to these human powers? If they have such rights, what is their extent? Has the action of the defendants impinged upon that extent? Since this democracy happens to be cast in the Federal mold, our answer to these questions must be sought in some clause or clauses of a written constitution.

That there are such corresponding rights and, of course, their complimentary liberties is conceded. So in nearly all modern legal systems we find a right (or liberty) of locomotion (movement) of free speech (and press) and of free assembly. Whether these liberties should be called natural or civil has been the subject of theoretical discussion. Professor Lieber in his book entitled *Civil Liberty and Self-Government* gives us this definiation:

> "Civil liberty is the idea of liberty in connection with politics, and must necessarily partake of the character of, or intertwine itself with, the whole system of politics of a given nation."
>
> The Meaning of Civil Liberty, Chapter 3, p. 42.

The matter seems rather one of scholarly description than of constitutional significance and we may, therefore, agree with Ambassador Bryce that it is:

> "Enough to say that although the conception of Individual Liberty may be made to include the exemptions our ancestors contended for in the seventeenth century, and though every kind of individual liberty may be called a Civil Liberty, there is this significant

> difference that the Civil liberties of those older days were extorted from arbitrary monarchs, whereas what we call Individual Liberty today has to be defended, when and so far as it needs defence, against the constitutional action of a self-governing community."
>
> Modern Democracies, p. 63.

and see also, *Modern Political Constitutions, Strong,* p. 34; *Our Ineffective State,* Hessler, p. 21; *The Story of Civil Liberty in the United States,* Whipple; *Political Theories from Rousseau to Spencer,* Dunning, p. 118.

As our particular legal system depends upon a rigid constitution, we are faced at once with its Pythias, interpretation. Mr. Justice Story pointed with pride to the fact that constitutions spoke in general terms quoting Chief Justice Marshall in the case of *Martin v. Hunter,* 1 Wheaton, 304, 326:

> "The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications . . .."
>
> Story's Commentaries, Vol. 1, 5th Edition, p. 323.

Any examination of Federal constitutions generally demonstrates that their particularity increases in inverse proportion to their age. *Real Democracy in Operation,* Felix Bonjour (Swiss); *Canada's Federal System,* A. H. F. Lefroy; *The Law of the Australian Constitution,* Donald Kerr; *The Law and Custom of the South African Constitution,* Kennedy and Schlosberg; *Government of India Act,* 1935, 26 Geo. 5, Ch. 2; *Federations, A Study in Comparative Politics,* D. G. Karve; *India, A Federation,* Sir Frederick Whyte, K.C.S.I.; *La Constitution de la Republique Argentine,* E. Rouys, *American Constitutions,* A compilation of the *Political Constitutions of the Independent Nations of the New World,* Rodriquez (International Bureau of the Amer-

ican Republics, Vol. 2, July 1905). The historical fact seems to be that Mr. Justice Story's vaunted vagueness was due rather to a distrust for any constitution than to a scientific preference for indefiniteness. Whatever the merits of the two schools of constitutional draftsmanship it is plain that the learned Justice places a greater burden, or should we say benefit, of governance upon the interpreting agency.

The constitutional provisions here applicable are contained in the First and Fourteenth Amendments and the pertinent words are liberty, due process and free as applied to speech and assembly. Can one conceive of words more flexible in content and in more complete fulfillment of Mr. Justice Story's ideal? Their very pliability is in fact the reason for our current capacity. The Supreme Court has recently adopted the dissent of Mr. Justice Harlan in *Patterson v. Colorado,* 205 U. S. 454 and has declared that freedom of speech and assembly come within the meaning of liberty as used in the Fourteenth Amendment. *Gitlow v. New York,* 268 U. S. 652, *Whitney v. California,* 274 U. S. 357, *Burns v. U. S.,* 274 U. S. 328, *Stromberg v. California,* 283 U. S. 359, *Near v. Minnesota,* 283 U. S. 697, *Grosjean v. American Press Co.,* 297 U. S. 233, and are therefore protected against action by the states (or their agencies as here). This is a direct reversal of a doctrine expounded in the cases from *Barron v. Baltimore,* 7 Peters 243 (1833) where Chief Justice Marshall referred to the "extraordinary occupation of improving the constitutions of the several states" to *Prudential Insurance Co. v. Cheek,* 259 U. S. 530 (1922). It is not our place to comment and much less to criticize. Those who are interested are referred to the articles of Judge Shattuck and Mr. Warren. *The True Meaning of the Term 'Liberty' In Those Clauses in the Federal and State Constitutions Which Protect 'Life, Liberty and Property',* 4 Harvard Law Review, 365 (Shattuck), *The New 'Liberty' Under the Fourteenth Amendment,* 39 Harvard Law Review 431 (Warren) and see *Bill of Rights and Fourteenth Amendment,* 31 Columbia Law Review 468, *Con-*

stitutional Law: Liberty of Assembly Under the Fourteenth Amendment, 25 California Law Review 496. In any event this change of position on the part of the Supreme Court is indicative of the elastic character of the interpretative function and perhaps also of our favorite theory that rigid constitutions must be construed in the light of political science.

The words "liberty" and "free" are absolute in grammatical form. Are they absolute in constitutional or for that matter in any other interpretation? Mr. Lippman thinks not:

> "There are, so far as I can discover no absolutists of liberty; I can recall no doctrine of liberty, which under the acid test does not become contingent upon some other ideals. . . . For what every theorist of liberty has meant is that certain types of behaviour and classes of opinion better regulated should be somewhat differently regulated in the future."
>
> 124 Atlantic Monthly, p. 616, quoted in 21 Columbia Law Review p. 526, p. 529.

If they are not absolute but conditional how must we determine the conditions: In part certainly from the history and philosophy of the concepts for which they stand. To attempt any extended exposition of either would enlarge this opinion beyond any reasonable limits and be an impertinence to those better qualified than this court. In the case of "liberty" it would be a word of supererogation because the meaning applicable to the case at bar is not in dispute. That meaning is an acknowledgment of a right of locomotion and a consequent right to freedom from restraint of the person except as a result of due legal process. It may not be amiss, however, to give some brief attention to the history and philosophy of the more controversial word free as applied to speech and assembly.

As the history of free speech is the outgrowth of its philosophy the latter takes precedence. Furthermore it can best be gathered from wiser and more eloquent pens. We

are arranging the quotations under headings that seem to us appropriate to the logic of the thesis. A fortiori we have included excerpts indicating dissent.

A. From the point of view of the persons expressing the thought.

I. The instinct for the expression of thought in human beings is as inevitable as the thought process itself.

> ". . . nam nec peritissimi, ne dicam plebem, tacere sciunt. Hoc Hominum commune vitium est, consilia sua, etsi tacito opus est, aliis credere."
>
> Spinoza.
>
> TRANSLATION. "Not even the wisest can hold their tongues and it is a universal vice of men to tell their ideas to others even when silence is needful."

> "For as long as human beings have tongues and minds they will say what they think and they will think differently."
>
> Freedom of Speech During and Since the Civil War, 18 American Political Science Review, p. 712, Eliel, above cited.

> "Force in matters of opinion can do no good, but is very apt to do hurt, for no man can change his opinion when he will, or be satisfied in his reason that his opinion is false because discountenanced."
>
> Rev. Jeremy Taylor.

> "The power of communicating thoughts and opinions is the gift of God, and the freedom of it is the source of all science, the first fruits and the ultimate happiness of society; and therefore it seems to follow that human laws ought not to interpose, nay, cannot interpose, to prevent the communication of sentiments and opinions in voluntary assemblies of men."
>
> Lord Chief Justice Eyre.

"Man has a right to thing all things, speak all things, write all things, but not to impose his opinions."

Machiavelli.

"It is not the law that is to be found in books that constitutes—that has constituted, the true principle of freedom in any country at any time. No, it is the energy, the boldness of a man's mind which prompts him to speak not in private, but in large and popular assemblies, that constitutes, that creates in a state the spirit of freedom. This is the principle that gives life to liberty; without it the human character is a stranger to freedom."

Rt. Hon. C. J. Fox.

II. So to repress it is dangerous,

"Finally, the most efficient of means for the preservation of the state from revolution is that which is in general the least considered—a system of education in the spirit of the constitution."

Aristotle.

"Since, therefore, no one can abdicate his freedom of judgment and feeling; since every man is by indefeasible natural right the master of his own thoughts, it follows that men thinking in diverse and contradictory fashions cannot, without disastrous results, be compelled to speak only according to the dictates of the supreme power."

Spinoza.

"But there is one only thing which gathers people into seditious commotions, and that is oppression.

"There is a remedy at hand, better than force, if you and your friends will use it, which cannot but prevail; and that is, let the ministers of truth be as diligent; and they bringing truth with them, truth obvious

and easy to understand, as you say what is necessary to salvation is, cannot but prevail."

John Locke.

"The press must be free; it has always been so and much evil has been corrected by it. If Government finds itself annoyed by it, let it examine its own conduct and it will find the cause—let it amend it and it will find the remedy."

Thomas Lord Erskine.

But see contra:

"We lawyers, who have seen the unreliability of evidence, know the truth about truth, which is that, unsupported by the sanction of Authority, it is as little conducive to public order as a lie. To the ignorant and brawling fanatics who stir you with their pother about liberty, political or civil liberty seems to be the principal end for which government ought to exist, instead of the furtherance of the commonwealth to the greatest extent."

Austin.

"Democracies which have gone fascist have gravely sinned by their leniency, or by too legalisite concepts of the freedom of public opinion. Slowly, the remaining democracies are remedying the defect. In some instances, the criminal codes are reformed in order to cope with the misuse of the press and of free speech to foster subversive propaganda or recriminations which affect the dignity of the republican and democratic institutions."

Militant Democracy and Fundamental Rights, by Karl Loewenstein, 31 American Political Science Review, pp. 417, 638, at 652.

III. and to permit it salutary.

"The only security of all is a free press. The force of public opinion can not be resisted when permitted

freely to be expressed. The agitation it produces must be submitted to. It keeps the waters pure."

Thomas Jefferson.

"With effervescing opinions as with not yet forgotten champagnes, the quickest way to let them get flat is to let them get exposed to the air."

Mr. Justice Holmes, letter to a friend, January, 1921.

"We have learned considerable from the affair and I might say that the lesson briefly is this: Street speaking should be allowed as far as possible, where it does not absolutely interfere with traffic, so as to give to an agitator the right to give vent to his feelings if he desires. It is safer to let him talk than to shut him up."

Freedom of Assemblage and Public Security, Brooks, Vol. 9 Publications of the American Sociological Society p. 11, p. 12.

"Pent-up volcanoes destroy far and wide when they burst their barriers, but the open crater pointed heavenward furnishes an excellent safety valve for hidden fires. Suppress social discontent, and riots follow; but allow men through their natural leaders to speak their grievances freely, through press and platform, and the very expression of them relieves the situation and becomes a method of education. We of the twentieth century are as yet such babes in knowledge, that we might far better furnish free forums at public expense, to any man or set of men who believe they have some new thing under the sun to talk about."

Discussion by J. Q. Dealey, Brown University, Vol. 9 Proceedings of the American Sociological Society p. 42, p. 43.

B. From the point of view of the thoughts expressed;

I. Truth is not absolute;

"And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?"

John Milton.

"The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common."

John Stuart Mill.

"Evidently such proposals to limit the right of free speech, political or religious, can be defended only by making the tacit assumption that whatever political or religious beliefs are at the time established, are wholly true; and since this tacit assumption has throughout the past proved to be habitually erroneous, regard for experience may reasonably prevent us from assuming that the current beliefs are wholly true. We must recognize free speech as still being the agency by which error is to be dissipated, and cannot without papal assumption interdict it."

Herbert Spencer.

"If persecution is unnecessary in the defence of truth, it has a fearful efficacy in preventing men from discovering it; and when it is so employed, as infallibility does not exist among mankind, no man can assuredly decide. For truth is scattered far and wide in small portions among mankind, mingled in every system with the dross of error, grasped perfectly by no one, and only in some degree discovered by the careful comparison and collation of opposing systems."

W. H. H. Lecky.

"He that will not reason is a bigot; he that cannot reason is a fool; he that dares not reason is a slave."

Sir William Drummond.

"If there is anything in the universe that can't stand discussion, let it crack."

Wendell Phillips.

"The man who will not investigate both sides of a question is dishonest."

Abraham Lincoln.

"To court discussion, is, of course, no certain proof that we are right, but to be afraid of it, is conclusive indication that we suspect at least we may be wrong."

Abraham Lincoln.

But see contra:

"There is nothing so true and good that skilful talkers cannot make it appear doubtful."

Bodin.

II. The heterodoxy or minority of today is the orthodoxy or majority of tomorrow;

"When there are persons to be found who form all exception to the apparent unanimity of the world on any subject, even if the world is in the right, it is always probable that dissentients have something worth hear-

ing to say for themselves, and that truth would lose something by their silence."

John Stuart Mill.

"In his person though he were the worst of men I contend for safety and security."

Chatham.

"The community which dares not protect its humblest and most hated member in the free utterance of his opinions, no matter how false or hateful, is only a gang of slaves."

Wendell Phillips.

"But the consideration which has the most enduring weight is the weakness of our capacity for truth. So much is doubtful, so much is altogether unknown; so indolent, so timid, so careless of truth, are the mass of men; so ill-situated and so ill-provided for knowing what is true are the rulers of every state, that the public cannot be too wary in committing to a government, a government cannot be too lenient in exercising any control over the expression and diffusion of ideas. And what holds good of governments, holds good also, although in a less degree, of public opinion."

. . . . . .

"And as it is with the reformer, so is it with the public whom he addresses. They may dislike his projects, they may suspect his motives, but they must debate the case upon its merits. For they too must confess that out of the numberless heresies of the past their present orthodoxy his arisen. They see that their own orthodoxy was once an innovation and may come to be a relic. It is but a relative orthodoxy. It too will pass, and they cannot say for certain what will succeed it. Thus forced to abandon dogmatism, they must be con-

tent to cling to honesty of purpose and scientific method."

Montague.

"One danger—the smaller one—yet sometimes troublesome, is the difficulty of ascertaining the will of the majority. The other danger is that minorities may not sufficiently assert themselves. Where a majority has erred, the only remedy against the prolongation or repetition of its error is in the continued protests and agitation of the minority, an agitation which ought to be peaceably conducted, carried on by voice and pen, but which must be vehement enough to arouse the people and deliver them from the consequences of their blunders."

James Bryce.

III. This is particularly so in the field of political science because of:

a) the nature of the subject matter—

"No good government has anything to fear from paper shot."

Oliver Cromwell.

"So true it is, however, that the discontent of the people is the only means of removing the defects of vicious governments, that the freedom of the press, the main instrument of creating discontent, is, in all civilized countries, among all but the advocates of misgovernment, regarded as an indispensable security, and the greatest safeguard of the interests of mankind."

James Mill.

"It is the ancient and constitutional right of this people to canvass public measures, and the merits of public men. It is a homebred right, a fireside privilege. . . . It is not to be drawn into controversy. It is as

undoubted as the right of breathing the air and walking on the earth. Belonging to private life as a right, it belongs to public life as a duty. This high constitutional privilege, I shall defend and exercise in all places in time of war, in time of peace and at all times. Living, I will assert it."

Daniel Webster.

"The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them; whereby oppressive officers are shamed or intimated into more honorable and just modes of conducting affairs."

The Continental Congress of 1774.

But see contra:

"First, the exercise of final judgment as to the expression of opinions and doctrines. So prolific in discord is freedom of expression that the great end of civil life is ever in peril without a strict supervision of speech and writing by the supreme authority. This is Hobbes's concise reply to the Miltonic plea for unlicensed printing."

Bodin.

"Curbing the speech of the governed is one of the first measures of a government when it is ever so slightly alarmed, and except in ancient Athens no one has ventured to suggest that it is not a legitimate exercise of power."

Freedom of Speech in Ancient Athens, Max Radin, Vol. 48, American Journal of Philogy, p. 215.

1) and more especially where the specimen of that subject matter happens to be a democracy—

"The sun might as easily be spared from the universe as free speech from the liberal institutions of society."

Socrates.

"If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

Thomas Jefferson.

"Freedom of opinion, of speech, and of the press is our most valuable privilege, the very soul of republican institutions, the safeguard of all other rights. . . . Nothing awakens and improves men so much as free communications of thoughts and feelings.

"If men abandon the right of free discussion; if, awed by threats, they suppress their convictions; if rulers succeed in silencing every voice but that which approves them; if nothing reaches the people but what would lend support to men in power—farewell to liberty. The form of a free government may remain, but the life, the soul, the substance is fled."

William Ellery Channing.

"Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness."

Cooley.

"The theory of government requiring royalty to be invested with perfection, which forbids question or discussion, is diametrically opposed to our theory of popular government, in which the utmost latitude and freedom in the discussion of business affecting the public and the conduct of those who fill positions of public trust, that is consistent with truth and decency, is not only allowable but essential to the public welfare."

Mr. Justice Scholfield, *Storey v. People*, 79 Illinois, p. 45, 51-52.

"The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."

Mr. Chief Justice Waite, *U. S. v. Cruikshank*, 92 U. S. p. 542, 552.

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Mr. Chief Justice Hughes, *De Jonge v. Oregon*, 299 U. S. p. 353, 365.

b) the unavoidably biased character of its judge (the censor);

"In other words, printing and speaking are to be subject to general rules of law, not to administrative censorship or arbitrary legislative restriction."

Equitable Relief Against Defamation and Injuries to Personality, Roscoe Pound, 29 Harvard Law Review p. 640, 651.

"that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy."

Thomas Jefferson.

c) because of an obvious distinction between thought and action, words and deeds.

"that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

Thomas Jefferson.

"The true distinction (between persecution and punishment) is perfectly obvious. To punish a man because he has committed a crime, or is believed, though unjustly, to have committed a crime, is not persecution. To punish a man because we infer from the nature of some doctrine which he holds, or from the conduct of other persons who hold the same doctrines with him, that he will commit a crime, is persecution; and is, in every case, foolish and wicked."

Lord Macaulay.

"silly leaflet of an unknown man."

Mr. Justice Holmes, dissenting opinion in *Abrams v. U. S.*, 250 U. S. p. 516, 628.

"It is the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts."

Charles Evans Hughes, on the ouster of the Socialist assemblyman, at Albany, New York, January, 1920.

"Our state rests too firmly upon the devotion of its citizens to require for its protection an imprisonment of five years for the mere expression of an erroneous, or even an illegal, political doctrine, unaccompanied by an overt act."

Governor Alfred E. Smith.

Anything more than an outline of the history of free speech would be a pedantic display of very easily obtainable knowledge. The standard authorities in the Anglo-Saxon countries are in England, *Liberty of the Press, Speech and Public Worship,* Paterson; in the United States, *Constitutional Free Speech,* Schroeder; *Freedom of Speech,* Chafee; The *Inquiring Mind,* Chafee, (the law review article quoted at some length by the learned Supreme Court of New Jersey in a recently filed opinion is to be found in Chapter 1 of *Freedom of Speech,* Chafee); *The Law of American Constitution,* Chapter 13, *Freedom of Religion, Press and Assembly,* Burdick; *The Reference Shelf,* Vol. 4, No. 9, *Civil Liberty,* Edith M. Phelps; *Freedom of the Press,* Dawson; *Censorship of Speech and the Press,* Beman; *Essays on Jurisprudence and Ethics,* Chapter 6, *The Theory of Persecution,* Sir Frederick Pollock; *Proceedings of the American Sociological Society,* Vol. 9, p. 67, Schofield. There are in addition a galaxy of articles in legal periodicals, the best of which in our judgment are found in: *Freedom of Speech* and of *the Press,* 2 Minnesota Law Review, 239; *Does the Constitution Protect Free Speech,* 19 Michigan Law Review 487; *Power of Government Over Free Speech and the Press,* 29 Yale Law Journal 410; *Free Speech in War Time,* 21 Columbia Law Review 526; *The Courts and Free Speech,* 8 Illinois Law Review 141; *Freedom of Speech and the Press.* 30 Yale Law Journal 48; *Free Trade in Ideas,* 11 Journal of the American Institute of Criminal Law and Criminology, 181; *Freedom of Speech and the Espionage Act,* 55 American Law Review 695; *Freedom of Speech and of the Press in the Federal Period, Sedition Act,* 18 Michigan Law Review 615; *Freedom of Speech and of the Press.* 4 Indiana

Law Journal 445; *Freedom of Speech During and Since the Civil War,* above cited; *Freedom of Speech and the Press,* 21 Georgetown Law Journal 35, 161.

To summarize their very thorough expositions. The problem of free speech became acute, as might be expected with the invention of and perfection of the printing press. At first as part of its policy of control over monopolies, the Crown made this new art subject to license. The advantage of such control by license as the handmaid of tyranny soon became apparent. Although not considered a liberty essential enough to be included in the Petition of Right (1628) or the Grand Remonstrance (1641), the struggle to free the printing press finally became part of the contest of the people against the Crown. This battle included, of course, a simultaneous resistance to another way of accomplishing prevention, namely, repression. So we find the agitation against the laws of seditious libel, the letters of Junius, the trial of the Printer and "that devil Wilkes". The first controversy ended in the victory expressed in Blackstone's pronouncement about previous restraints. Blackstone's *Commentaries,* Vol. 4, Chapter 2, p. 151. He raised freedom of press from a literary and political watchword to an accepted legal concept. *Freedom of Speech and the Press,* 30 Yale Law Journal (Corwin) 49). The second in a transference of adjudication from the King's Judges (whether in the Star Chamber or Lord Mansfield in open court) to the 'people's shopkeepers'. See *Law of the Constitution,* Dicey, 4th Ed., p 234. There has been much discussion as to the substance of any distinction between previous restraint and subsequent punishment. *Freedom of Speech, Chafee,* above cited (Chapter 2, Opposition to the War with Germany); *Freedom of Speech and the Press,* 21 Georgetown Law Journal 35, 161, above cited; *Does the Constitution Protect Free Speech,* 19 Michigan Law Review 487, above cited; *Power of Government Over Free Speech and the Press,* 29 Yale Law Journal 410, above cited; *Free Speech,* Schroeder, above cited, (Chapter 2, Blackstone's Critics); *Freedom of*

Speech During and Since the Civil War; Eliel, above cited; *Problems Relating to Bill of Rights and General Welfare;* New York State Constitutional Convention Committee, Vol. 6, above cited, Section 2 of Chapter 12. There is at least this difference. Advance action forestalls the opportunity for martyrdom.

The United States came into being almost simultaneously with the outcome of the struggle we have been talking about. The Colonies had had a similar history of repression at the hands of the Royal Governors:

> "There are no free schools or printing and I hope we shall not have these 100 years hence, for learning has brought disobedience and heresy and sects into this world and printing has divulged them. Libels against the best government have resulted. God keep us from both."
>
> Governor Berkeley, *Watson's Constitutions,* Vol. 2, p. 1400.

Development of Freedom of the Press in Massachusetts, Dunniway; *Constitutional Free Speech,* Schroeder, particularly Chapters 5 and 7. One might therefore expect to find some countervailing provision in the Constitution. One was submitted, but here we come across that fear of the central government which is both the reason for and the handicap of Federations (*Etat Federal,* Le Fur, *Les Etats Federeaux —Etude Droit Constitutional Positif* Ch. Durand; Dr. en Droit; *La Theorie Juridique De L'Etat Federale,* M. Mouskeli, Dr. en Droit; *Failure of Federalism in Australia,* Canaway.). The suggestion drafted by Mr. Pinckney was rejected (*Records of the Federal Convention,* Max Farrand, II, 334, 340, 341, 545, III, 122, 256, 290, 595, 599, 609. The rejection was of short duration. The ratifying states considered the fear of centralization in this instance exaggerated and the danger great. They insisted on the inclusion of a guarantee of free speech and assembly in the bill of rights. *Elliot's Debates* (2d. ed. 1836) I, 359, 360, 362, 369, 371, 375, II, 424, 511, 537, III, 411, 414, 415, 481, 551, IV, 159, 175, 269, 301,

302. *Pennsylvania and the Federal Convention*, J. B. McMaster and F. D. Stone. Since then the Supreme Court has given its approval to the Blackstone definition. *Patterson v. Colorado*, above cited, *Near v. Minnesota*, above cited, *Lovell v. Griffin*, 303 U. S. 444, *Grosjean v. American Press Co.*, above cited. The principal dispute has revolved around the validity of a distinction between prevention and repression above referred to. It would be accurate to say, we think, that the high court has found a distinction but has divided both in the same and in different decisions between clear and present (imminent) danger and tendency, remote or otherwise, as a definition of that distinction. *Schenck v. U. S.* 249 U. S. 204; *Frohwerk v. U. S.*, 249 U. S. 204; *Debs v. U. S.*, 249 U. S. 211; *Abrams v. U. S.*, 260 U. S. 616; *Schaefer v. U. S.*, 251 U. S. 466; *Pierce v. U. S.*, 252 U. S. 239; *O'Connel v. U. S.*, 253 U. S., 152; *Gilbert v. Minnesota*, 254 U. S. 325; *Grosjean v. American Press Co.*, above cited and *Herndon v. Lowry*, 301 U. S. 242.

Free assembly is free speech in particular circumstances. It is in one sense free speech carried to its ultimate and logical conclusion and in another free speech in its most complicated and delicate phase. However that may be, the history and philosophy of free speech itself are applicable and in so being account for the comparative paucity of material on free assembly. Apart from the foreign sources referred to later, we have found the authorities to be as follows: a) One reference by Representative Sedgwick in the *Debate on the Bill of Rights*, Annals of Congress (1788), p. 759; b) a chapter in *Liberty of the Press, Speech and Public Worship, Paterson*, (Chapter 2, Freedom of Public Meetings and Addresses and Petitions) and one in *The Law of the Constitution*, Dicey, (Chapter 7, The Right of Public Meeting); c) sections in Paterson and the New York Committee book, above cited, those sections being entitled, *Freedom of Thought as Developed in Public Meetings*, Chapter 1, p. 12, Paterson, *Freedom of Assembly as an Independent Right*, Chapter 12, section 3, p. 154, New York

book and *Publication, Speech or Assembly Which Creates a Danger That Unlawful Acts Will Be Committed,* Chapter 12, section 4, p. 163, New York book; d) four law review articles, *The Right of Assembly,* 9 New York University Law Quarterly Review 1, Jarrett and Mund; *Public Order and the Right of Assembly in England and the United States—a comparative study,* 47 Yale Law Journal 404; *Police Powers and Public Meetings,* 6 Cambridge Law Journal 175, E. S. Wade; *Reasonable Restrictions Upon Freedom of Assembly,* Proceedings of American Sociological Society, Vol. 9, p. 29, Hon. Arthur Woods, Police Commissioner; e) two law review notes, *Limitations on the Right of Assembly,* 23 California Law Review 180; *Restrictions on the Right of Assembly,* 42 Harvard Law Review 265; f) debates in the *House of Commons on the Public Order Bill of 1936.* (1 Edward VIII and George VI, Chapter 6, p. 60), 317 Parliamentary debates 1350 also 318 Parliamentary debates 150, 582, 1730; g) certain United States Supreme Court cases all of which except one comingle the right of free speech and free assembly in the same case, *U. S. v. Cruikshank,* 92 U. S. 542, above cited, *Davis v. Commonwealth,* 167 U. S. 43, *De Jonge v. Oregon,* 299 U. S. 353, above cited, *Herndon v. Lowry,* 301 U. S. 242; h) and two books not available in the United States, *Law and Political Uniforms, Public Meetings and Public Armies,* Baker; *Law Relating to Public Meetings and Processions,* Crew.

Inasmuch as free assembly is a special form of free speech, the philosophy of the latter applies. Because it is only a form of free speech we can expect to find and do find that philosophy and that history modified by the particular form. For that reason, if for no other, we need not indulge in any elaborate discussion and confine ourselves therefore to a few quotations on both of the stated phases and to a short history.

A. Free assembly is a special form of free speech.

> "Closely connected with the right just mentioned is the right of citizens peaceably to meet and to take public matters into consideration."

Civil Liberty and Self-Government, Francis Lieber, above cited, Chapter 12, Sec. 16, p. 127.

"So long as such public meeting can be held at the call of any voice from the crowd, and the people can meet in any numbers without let or hindrance and discuss and exchange their setiments on anything and everything that concerns them—that touches their interests or their feelings—this is as near the enjoyment of perfect liberty as is attainable."

Paterson, above cited, p. 12-13.

"The right of assembly is a self-evident, inalienable right of the people and to dwell at such length upon it must make us appear trifling in the eyes of our constituents. It might as appropriately be declared that a man should have a right to wear his hat if he pleased; that he might get up when he pleased and go to bed when he thought proper. Surely it was not necessary to enter these trifles in a declaration of rights in a government where none of them were intended to be infringed."

Annals of Congress 1834, p. 759.

"The close relationship between the right to assemble and the right to speak and publish is apparent. Indeed, to many, the function of freedom of assembly is merely to give occasion and force to freedom of speech and press."

New York Committee book, above cited, p. 154.

"Man is a gregarious animal. Since earliest times men have asembled together for purposes of feasting, hunting, sympathy, and companionship. In the course of time when the family or household became the economic unit, people assembled for social, religious, political and judicial purposes."

The Right of Assembly, 9 N. Y. U. Quarterly Law Review, p. 1, above cited, p. 4.

B. Because it is only a form of free speech.

"The ancient tyrants always feared any large congregation of men in towns, and endeavored to find rustic occupations for them, so as to separate them and divert their minds; and it is said Peisistratus commenced the building of the Temple of Jupiter for some reason of this kind."

2 Thirlw. Gr. 71.

"The right of assembly thus appears more restricted than many other elements of personal liberty. This is inevitable, for in the misuse of concerted group action lies the most powerful menace to public peace. *Salus reipublicae suprema lex.* But, for the present at least, the limit of restriction seems to have been reached, and the rights of the individual demand a wise and fair application of the existing laws."

Restrictions on the Right of Assembly, 42 Harvard Law Review, p. 265, above cited, p. 269.

"A proper consideration of the law relative to any of the civil liberties must recognize the unique character of this brand of jurisprudence. Civil liberties derive their justification from a philosophy which tends to weaken or disappear in the face of passions and fears aroused by social stress and economic change. It is not enough to write freedom of assembly into the constitution. The constitution is not self executing. Yet it takes on vitality in direct proportion to the unpopularity of the groups whose liberties are successfully guarded.

"If freedom of assembly is not protected on the immediate occasion, it stands little opportunity of later vindication. Minority groups are seldom equipped with the requisite funds or influence to render vindication by legal process either consistent or certain. The consequence is a sporadic declaration of the lawfulness

of a disrupted meeting, the occasion for which has long since passed."

P. 191-192.

. . . . . .

"The subject is a confused and difficult one. A proper balance between civil liberty and public safety depends on a long maintained tradition of wisdom and moderation in the laws themselves, and no less wisdom and moderation in their administration."

Limitations on the Right of Assembly, 23 California Law Review 180, above cited, p. 193.

"To those who wish to preserve free speech, more pressing problems are presented by the limitations on the right of public assembly, for the cumulative effect of these restrictions is serious. Repression of this sort is sought to be justified by the plea that it is necessary to maintain the public order. Some restrictions are necessary to curtail conduct which actually interferes with the public safety, but these measures are frequently used where the threat of disturbance is remote. In the long run the public order may best be served by risking a little disorder. To let off steam may scorch the ceiling; it does not blow off the roof.

"Several proposals for reform recur. It is sometimes urged that all discretion be taken away from the law-enforcing agencies. The suggestion is futile. Every statute, every ordinance must look to men for its interpretation. But this study has indicated that the wording of statutes does have some significance. It might therefore be helpful to attempt to tighten up those statutes seeking to maintain the public order. Within broad limits, a standard of conduct can be described which should be extremely difficult to twist or distort. But a word can have only that meaning which a man imports to it.

"There is of course some hope that the law-enforcing agencies might be induced to use their discretion

more wisely. The American policeman might at least be taught to follow the example of his English contemporary by discarding some of his more brutal tactics. And judges might be educated to be frankly suspicious of police administration in civil liberties cases. But these vague hopes are hardly likely to be achieved."

Public Order and Right of Assembly, 47 Yale Law Journal #404, above cited, p. 431-432.

"If you are going to allow the free play that is necessary for political demonstration and discussion in a democracy you must sometimes have occasions when tempers and feelings run high in particular districts and you must then have the liability of some public disorder taking place."

Debates on Public Order Bill (House of Commons) Vol. 318 Parliamentary Debates, 1936-1937, p. 182.

But see contra.

"But liberty, gentlemen, must not be converted into license. What they ask for is license, and this I shall never grant! You can, if you wish, organize and march along in processions and I shall have you escorted."

Mussolini as Revealed in His Political Speeches, November, 1914, August, 1923, by Bernando Quaranta di San Severino.

The same may be said of the history of free assembly. If free speech was considered obnoxious and was restricted, its indulgence in the presence of more and perhaps involuntary listeners must be deserving of even more attention. So in the England of Charles the Second the judges were consulted as to whether the King could by proclamation shut up the coffee houses (nurseries of idleness and pragmaticalness). It was not apparently until the excitement attendant upon the expulsion of Wilkes from the House of Commons that the holding of public meetings was developed.

The government acted promptly to prevent any meetings called except by public officials. *32 Parl. Hist. 308, 35 Parl. Deb. 1230.* It took similar action twenty years later when the delay in the reform of Parliament led to the irritation of the people and the Manchester meetings. This last enactment was limited to five years and since then speech at public assemblies in England has been subject only to condition peculiar to them and accordingly more appropriately developed later in this opinion. In this country we have been able to find practically no separate history of free assembly as distinguished from free speech other than that developed in the cases and in the articles and books already cited. We have already quoted the only reference to the matter in the Debates on the Bill of Rights. The guarantee itself is in effect in nearly all the state constitutions.

> "A survey of the state constitutions today reveals that all but four states have made an express guarantee of this right. (The four exceptions are Maryland, Minnesota, New Mexico and Virginia.) Aside from these four exceptions, the state provisions show a marked degree of similarity. They may be classified first of all into two major divisions: The temper or manner of assembly; and the purpose of the assembly."
>
> The Right of Assembly, 9 N. Y. U. Law Quarterly Review, above cited, p. 16.

This survey of the philosophy and history of liberty, free speech and assembly leaves an impression of some qualification of their meaning. We ascribe that qualification to the nature of democracy itself. That type of government is based on the consent of the governed. It is based on peace and opposed to violence. It follows that in violence we must look for the limitations on or qualifications of the meanings we have been discussing. That violence may be directed against the government itself, it may be directed by some of the people against others of the people.

This right of the government to protect itself against violence has not always been acknowledged.

"But mere verbal insults were not considered treason (Digest or Pandect, 48th Book, 4th Title, 7th Fragment, 3rd edition); for said the Emporors Theodosius, Arcadius, and Honorious, in language that is a standing rebuke to pusillanimous tyrants, if the words are uttered in a spirit of frivolity, the attack merits contempt; if from madness they excite pity; if from malice, they are to be forgiven."

Code of Justinian 9th Book, 7th Title, First Constitution.

"I hold that a little rebellion now and then is a good thing and as necessary in the political world as a storm is in the physical. . . . An observation of this truth should render honest republican governors so mild in their punishment of rebellions as not to discourage them too much. It is a medicine necessary for the sound health of government."

Thomas Jefferson.

"This whole theory as to the power of society to displace the holders of governmental authority, is, of course, merely one version of the so-called 'right of resistance'. Locke's phrase for designating this right is the 'appeal to Heaven', which he regards as the privilege not only of the body of the people but even of any single man.

. . . . . .

"'The people' are as a rule 'more disposed to suffer than right themselves by resistance.' Only when injustice and oppression have gone very far and have become obvious to a majority of the people will the 'appeal to Heaven' actually be made."

Political Theories, From Luther to Montesquieu, Dunning, p. 362-363.

It can be attributed to the right of self-preservation and as such is applicable to every form of organized society. *Comm. v. Widovich*, 145 Atlantic 295 (Pennsylvania). Our own attribution seems more in the spirit of the democratic

circumstance. At any rate, it is acknowledged and any doubts relate first to the wisdom of its exercise in respect to mere words as opposed to acts and second what words should be proscribed or punished. (cf. United States Supreme Court cases and articles cited under distinction between prevention and repression.) In this last aspect we have again the cause and effect problem of Judge Learned Hand's famous phrase about words as the "triggers of action rather than keys of persuasion" and presumably the same difference among the judges as to its correct answer.

The people of the United States have shown a complete faith in the effectiveness of dealing with words even before they are transmuted into deeds and have not been impressed with the quotations expressed in the sentiments of two English legal worthies.

> "The sergeant in a very grave speech laid open the inconvenience of making words treason—they were often ill-heard and ill-understood and were apt to be misrecited by a very small variation."
>
> Bishop Burnett's History of His Own Time, Vol. 3, p. 39.

> "How dangerous it is to depart from the letter of that statute and to multiply and enhance crimes into treason by ambiguous and general words such as accroaching of royal power, subversion of fundamental laws and the like. Since this offense which from its nature is so capable of being created and judged of by rules of political expediency is made the spear of the occasion."
>
> Erskine.

This faith and its resulting action seems to have followed closely upon the alarm natural to manifestations here and in the world generally of symptoms more germane to political systems based not upon the peaceful consent of the governed but upon the violent coercion of the dissenting. So after the French Revolution we had the alien and sedition law and after the tragic assassination of President McKin-

ley the anarchy statutes; a typical one is *Laws of New Jersey*, (1902) Ch. 133; cf. *The Nation and the Anarchists*. Wambaugh 13 Green Bag 461; *25 N. J. Law Journal*, p. 32, editorial note; *31 N. J. Law Journal*, p. 140, *Charge to the Grand Jury*, and see also *State v. Boyd*, 86 N. J. Law 75. The spirit behind all this legislation is well epitomized in Burke's reflections on the French Revolution.

> "These associators to prosecute, who keep watch of late upon our words and upon our looks, are associated, it seems, to preserve our excellent constitution from the contagion of France, where an arbitrary and tyrannous democracy, under the colour of popular freedom, destroys all the securities and blessings of life—but how does it destroy them? How, but by the very means that these new partners of executing power would themselves employ, if we would let them."

And see also:

> "Fisher Ames died in 1808 obsessed by fears his children (one of whom lived to be Chief Justice of Massachusetts), must look forward to their future servitude to the French."
>
> Henry Adams History of the United States, 183.

Their success or failure is in the case of the alien and sedition law a matter of past history (*The American Leviathan —The Republic in the Machine Age*, Beard, p. 55). In the case of the anarchy and criminal syndicalism statutes it is a matter of present prophesy.

We have given these possible qualifications of the significant constitutional words on the theory that their assumption may eliminate the unsatisfactory factual disputes that beset law suits. Let us now consider them in the light of the defendants specific acts. We have seen that they fall into five different categories. First the police of Jersey City removed (or excluded if prompt enough) the plaintiffs from the municipal limits. This removal (or exclusion) was by administrative (police) fiat alone. They exercised a censorship of persons. The constitutional word applicable here

is that appropriate to persons, namely, liberty. That liberty includes the right of locomotion (movement) is both obvious and recognized by the writers:

> "The right of locomotion or of free egress and regress as well as free motion within the country, is another important individual right and element of liberty."
>
> Civil Liberty and Self-Government, Lieber, above cited, p. 95,

also *Manual of Political Ethics*, Lieber, Vol. 1, Book 2, Chapt. 5, p. 184.

> "I should say that it means exemption or immunity from unlawful imprisonment or detention of the body, freedom to go and come on lawful business or pleasure, commonly called the right of locomotion; the right to acquire, hold and convey property; the right to make contracts and to labor in any lawful calling to earn a living; to marry and have family."
>
> A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment of the Constitution of the United States, Brannon p. 110.

> "There are naturally few invasions of this cardinal right so far as a man's person or free movement is concerned in our country.
>
> p. 97.
>
> . . . . . .
>
> "Further, the right to liberty includes constitutionally the right to move, go and come, live where he will, emigrate, and if a citizen, to return; also to forswear his allegiance and expatriate himself, but not against his will; he can never, even as a punishment for crime, be banished."
>
> The American Constitution as it Protects Private Rights, Stimson p. 99.

and by the cases. *The Passenger Cases*, 7 Howard, 283, *Crandall v. Nevada*, 6 Wall 35, *William v. Fears*, 179 U. S.

270, *Twining v. N. J.*, 211 U. S. 184, *Territory of Hawaii v. Andhuą,* 48 F. (2d) 171, *U. S. v. Miller*, 17 Fed. Supp. 65. Although relegated to the general terms in the law of England and in our Constitution, it has been considered deserving of specific mention in the constitutions of other federations.

"Art. 44. Aucun canton ne peut renvoyer de son territoire un de ses ressortissants, ni le priver du droit d'origine ou de cite.

"Art. 45. . . . Exceptionnellement, l'etablissement peut etre refuse ou retire a ceux qui, par suit d'un jugement penal, ne jouissent pas de leurs droits civiques."

Swiss Constitution, 1874.

TRANSLATION—"Art. 44. No Canton can send out from its territory anyone of its residents nor can it deprive anyone of his right of domicile or of citizenship.

"Art. 45. . . . By way of exception the right to settle can be refused or withdrawn from those who by reason of conviction of crime have lost their civil rights."

"Art. 14. All the inhabitants of the nation shall enjoy, subject to the laws regulating their exercise, the following rights, to wit: to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, remain in, travel through, or leave the Argentine territory; to publish their own ideas through the press without previous censorship; to use and dispose of their property; to associate together for useful purposes; freely to profess their religion, and to teach and to study."

Constitution of the Argentine, 1898.

The liberty being acnowledged, any interference with it must be by due process of law. We need not cite authority either for the general proposition or for its particular application here since due process postulates a "day in court."

A police officer is confined to an insistence on such day. In other words, he can arrest and convey to the reasonably convenient trier and nothing more. *5 Corpus Juris 430* and cases cited. This was acknowledged even in the Bisbee I. W. W. Deportation cases, *State of Arizona v. Wootton*, 6 American Bar Association Journal, Part 2, 99, pamphlet *The Law of Necessity* published by Bureau of Information (Arizona) where defense counsel said:

> "We expect to show that the jails in this country were inadequate within which to confine the said conspirators . . . ."
>
> p. 7.

and the practice generally was condemned by a Pennsylvania Judge:

> " 'The action of the mob—I take pains to use the accurate word—in running out of town with threats of violence, the officials of the miners' union, was sheer anarchy, an outrageous violation of the rights guaranteed by the Constitution to the humblest person.' "
>
> The Story of Civil Liberty in the United States, Whipple, above cited, p. 221.

This without more disposes of the so-called deportations. We go further however and maintain that neither a city, a state, nor the nation can resort to the banishment of its citizens even after a compliance with the due process and fair trial requirements and even as a punishment for crime. Any such drastic power is manifestly an attribute of sovereignty. As such it does not pertain to states and a fortiori to cities (*Crandall v. Nevada*, above cited, *The Passenger Cases*, above cited.) Any contrary doctrine would destroy our national unity and relegate us to the passport system of earlier times. We find the learned author of "*Das Passwesen*," Walter Transfeldt, describing the former practice in Germany of requiring passports for domestic as well as foreign travel, as follows:

> "A means of facilitating police supervision over travelling apprentices, beggars, former criminals, and

suspicious characters, and also a form of political check. The general point of view with respect to the passport requirements at that time in Germany as a supposed means of protection against politically dangerous persons, or against the introduction of new political ideas, was expressed most clearly by the pronouncement of the Confederation of May 5, 1832. (Protokolle d. Deutschen Bundesverammlung 1832 S. 949, 953)."

p. 18.

Dr. Paul Vallotton in his *Dissertation De License Et De Doctorat* takes us even further back into antiquity:

"Tres anciennement il n'y avait pas de trafic international des voyageurs dans le sens ou nous l'entendons aujourd'hui. L'etranger etait par definition l'ennemi et d'ou qu'il vint il etait accueilli comme tel."

p. 16.

TRANSLATION: In very early days there was no international travel in the sense we understand it now. The foreigner was by definition an enemy and wherever he went he was received as such.

If there could be some theory of quarantine it is applicable only in the field of physical science. Ideas are not Japanese beetles. This thought finds expression in the opinions of the United States courts.

". . . . While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection."

Hannibal and St. Joseph R. Co. v. Husen, 95 U. S. p. 465, 472.

"It will be observed that no overt act is charged against any of the class of persons threatened and about to be imported by the defendant Coal Company over the defendant Railroad Company's lines. They are not alleged to be convicts or ex-convicts, nor are they alleged to be paupers, idiots, insane, or diseased persons. They are said to be 'armed', and to belong to the 'low and lawless type of humanity'; not that they are low and lawless themselves, but are of that type. No statute of this state condemns the coming of such men hither. No expression of the legislative will relating to that class of men coming into the state has found a place in our laws. They are silent on the subject. It will be time enough to decide whether the state has the power to prohibit them coming when a proper case, based on such a statute, is brought to the attention of the Court. It is enough now to say that, under the fourteenth amendment, and under the commerce clause of the constitution, they now have that right."

State v. Arkansas and Kansas Coal Co. 96 Fed. 353 at 368.

"And the power of exclusion by the state, as we have already said extends only to convicts, lepers, and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge."

In re Ah Fong, 1 Federal Cas. p. 213, 216.

Furthermore quarantine is limited by definition to a current condition and not to be exercised on the basis of the probability of the recurrence of a previous condition (past conduct).

Deportation therefore is sanctioned in the single instance 1) of aliens, 2) by the nation, 3) under certain specified circumstances. Two of these, as one might suppose are anarchy and the advocacy of the overthrow by violence of the government whose hospitality they seek. Cases collected under *Section 137, Title 8. U. S. C. A.*, particularly notes 5

and 6. Even here some abbreviated but nevertheless actual hearing must be accorded the alien and the fiat of the administrative officer (here the Immigration inspector and not the policeman) is not constitutionally sufficient. Cases collected under *Section 137, Title 8. U. S. C. A., note 9.* Here also what words constitute such advocacy, is troublesome. *Strecker v. Kessler, District Director of Immigration and Naturalization,* 95 F. (2d) 976, Petition No. 330 for certiorari filed and granted (New York Times, October 21, 1938). This law and this procedure has been criticized. *Freedom of Speech,* Chafee, above cited, Chapter IV, The Deportations, p. 229.

We proceed from censorship of the persons claimed to have unpopular thoughts locked within their bosoms to prevention of communication of those thoughts. Thus we come to an interpretation of the constitutional word free. As we said earlier the attempted transmission of ideas to the people of Jersey City falls into two categories, to willing and to unwilling listeners. In the first category, the attempted penetration by opinion is by circular or leaflet distribution (the leaflets being by concession intrinsically harmless) and the "hiring of halls" for speakers.

At the beginning of this decision we spoke well of the candor displayed in the presentment of what is unquestionably a widely held point of view. We must make an exception in the leaflet maneuvers. We detect here traces of the least pleasant side of our profession induced no doubt, as we said, by the impossibility of reconciling the views of the Mayor and the Supreme Court. We think we detect these traces because the books are full of instances of similar tactics employed by the law departments of other cities governed no doubt by Mayors with similar views.

The strategy is the use of ordinances designed and phrased to protect the streets against being littered with the consequent clogging of sewers, fire and disease hazards and the traditional frightening of horses, *People v. Armstrong,* 73 Michigan 288, 294, 41 N. W. 275; *Wettengell v. City of Denver,* 20 Colorado 552, 30 Pacific 343; *Anderson v. State,*

69 Nebraska 686, 96 N. W. 149 for the purpose of protecting the minds of the people who walk those streets against being littered with certain kinds of ideas and again traditionally perhaps, being frightened. One might suggest the availability of street cleaning departments or refuse receptacles and some courts have even declared these ordinances invalid on the ground of unreasonableness. *Dillon Municipal Corp. 5th Ed. sec. 589, People v. Armstrong,* above cited (Michigan), *City of Chicago v. Schultz,* 173 N. E. 276 (Illinois). Furthermore as the purpose is to prevent "casting away" or "throwing to the wind" there is a distinction between non-commercial and commercial (advertising) matter, the American tradition being to overcome sales resistance forcibly. *City of Philadelphia v. Brabender,* 51 Atl. 374 (Pennsylvania), *Wettengill v. City of Denver,* above cited (Colorado), *Coughlin v. Sullivan,* 100 N. J. L. 42 (New Jersey). However that may be, it is unnecessary to elaborate the point in view of the Supreme Court's treatment of an identical ordinance of a Southern city. In declaring it unconstitutional, Chief Justice Hughes said:

> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing'. And the liberty of the press became initially a right to publish 'without license what formerly could be published only with one'. While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision."

Lovell v. Griffin, above cited at 451-452.

We were dissatisfied at the trial and we are dissatisfied now with the state of the record with respect to the private meetings. There the defense was a denial. The plaintiffs assert that they are unable to obtain private places in which to hold meetings and we have no doubt but that this is true. Counsel then offered to prove that this unavailability of forums is due to coercion by the City officials. His offer of testimony was bottomed on the statements of the hall owners made to the plaintiffs or some of them. We held, whether rightly or wrongly is not for us to say, that such evidence could not come from the plaintiffs but must come from the very persons assigning these reasons for thei refusal to rent. The Mayor with the frankness before adverted to denied that the city had brought pressure to bear and explained the situation on the ground that the hall owners shared the general allergy (the word is ours, not the Mayor's) of Jersey City people toward these plaintiffs.

We are skeptical enough to realize that municipal authorities (like other authorities) are possessed of indirect means of coercion. In fact it was unnecessary for counsel to point this out and in doing so they might very well have referred to previous instances of such tactics.

> "Under the 'architectural police regulations' in Vienna it is technically impossible to build a theater so as to make it a profitable undertaking. Yet new theatres are built and flourish, while old theaters that violate the main principles of the regulations are maintained. The good-natured authorities are willing to close one eye to illegalities, on the tacit understanding that he who profits by such indulgence will not be recalcitrant should the convenience of the state require pliancy on his part. The manager of a theater who should refuse to remove from the playbill a play displeasing to the authorities, or should insist upon the circumstance that the play had been authorized by the censor, might find the sanitary arrangements of his theater declared to

be insufficient by a special commission, or the condition of the ceiling perilous, or the fire exits much too narrow."

The Hapsburgh Monarchy, Wickham Stead, p. 76.

"In most cities, hall licenses may be revoked at any time because of structural defects in the building. An 'understanding' or 'gentleman's agreement' exists in some cities whereby hall-owners submit all programs of public meetings to the police department for its approval.

"In exercising this discretion it is evident that the purpose of the assembly plays the leading role."

The Right of Assembly, 9 N. Y. U. Law Quarterly Review, p. 1, above cited, p. 29-30.

And see also 11 Massachusetts Law Quarterly Rev. 25, *The Inquiring Mind*, Chafee, above cited, Chapter entitled The Freedom of the City, p. 144. Whether this or something like it is the explanation in Jersey City must, in our view, come from the mouths of those who alone have first hand knowledge of it. In any event, the failure for whatever reason, to secure private meeting places emphasizes the importance of the next issue: that of the right of public assembly.

To us the answer to this question is plain. The difficulty, if any, lies in the state of the authorities, a difficulty often encountered in a precedent controlled legal system. If those authorities contained a direct ruling by our highest court, our duty would end there. In our judgment, they do not. We are free therefore to decide the matter upon principle as we see it.

We hope our recital of the history and the rationale (vicariously) of free speech carries conviction. That history and that theory has been recognized in our constitution. The communication of thought, unless you believe in mind-reading, requires some mechanical means. In the case of speech, one needs some place to speak in and some people to listen. The public meeting has been called the

"platform of the poor". Lacking the money or perhaps in Jersey City the goodwill, sufficient to obtain some private place, the would-be orators are forced to resort to publicly owned places.

> "One great obstacle to the right of public meetings has always been the finding of a place of meeting large enough, and not too large, for the purpose of hearing and being heard. This, indeed, is a difficulty which more peculiarly affects the poorest portion of the community, it being always within the power of the wealthy to obtain by purchase or some valuable consideration access to a convenient place if they choose to undertake such preliminary expense."
>
> Paterson, above cited, p. 21.

> "Recognition of the fact that there is no real alternative to use of the streets except complete silence should remove entirely the claim that the city's proprietary interest gives it some special power over public places."
>
> 5 International Juridical Association Monthly Bulletin, Ordinances Restricting Leaflet Distribution, p. 147, 149.

> "Unfortunately, however, these constitutional provisions do not guarantee a place for the people peaceably to assemble, and restrictions on street meetings in this country are consequently as extensive as in England."
>
> Public Order and Right of Assembly, 47 Yale Law Journal, above cited, p. 412.

We are willing to eliminate the streets or squares from such resortable places. We question whether the easement of passage includes the quite inconsistent right to obstruct passage. (sed quaere whether a procession is a passing.) *Public Order*, 8 Pol. Quarterly 7, *Public Meeting and Processions*, 6 Cambridge Law Journal 161, above cited, *Berden v. Wrigley*, 1 K. B. 337. It will be noticed that the authorities cited are all English. For some quite, in our opinion, illogi-

cal reason the American cases do not seem to stress the obvious difference between a street and a park.

We are not willing to eliminate the latter. It seems to us that the purpose of most parks is the recreation of the public. *Archer v. Salinas City,* 28 Pacific 839 (California), *So. Park Commissioners v. Montgomery,* 92 N. E. 910 (Illinois), *Cupallan v. Andrews,* 125 N. E. 502 (New York), *Ramsted v. Carr,* 154 N. W. 195, 200 (North Dakota), *Commissioner v. Hazen,* 56 Atlantic 263 (Pennsylvania), *North Port Wesleyan Grove Camp Meeting Assn. v. Andrews,* 71 Atlantic 1027 (Maine). We include in that word recreation an easement of assemblage. We believe it is not limited to physical recreation (fresh air, sunshine and exercise) but includes mental recreation and therefore the opportunity to impart and receive instruction. We have used the limiting word "most" before parks because we concede that there are parks whose purpose is narrow. Such, for instance, as the Botanic Gardens (flowers) in Sydney, Australia (*Fox v. Allchurch,* [1926] So. Australian State Reports, 384), Soldier's field (athletics) in Chicago (*Coughlin v. Chicago Park Dist.* 4 N. E. 2nd series 1 [Father Coughlin]).

We hold then that a municipality's proprietary right is subject to an easement of assemblage in such parks as are dedicated to the general recreation of the public. We hold also that this easement of assemblage is clearly subject to a municipal right of regulation.' To allow speakers at any place and in any number does not contribute to the enjoyment of the public. This was decided in an Engiish case dealing with public meetings on Clapham Common, dated incidentally, prior to the first of the cases cited in defendants' brief.

> "Secondly, he contended that the common having been 'dedicated to and for the use and recreation of the public as an open and uninclosed space for ever', the board could not prevent the public from assembling there whenever they pleased for the purpose of hearing sermons, or lectures, or addresses, on any subject, religious, political, or otherwise. If this argument were

> sound it would follow that any number of public meetings might be held at the same time in various parts of the common, even to the extent of monopolizing the whole area . . . . . Its object was to secure in perpetuity the common as a place which the public might use as of right for the purpose of recreation, and in order that all classes may at all times share in its enjoyment, the user of the common is necessarily placed under regulations."
>
> *De Morgan v. The Metropolitan Board of Works,* 5 Q.B.D., p. 155, 158.

By the same token the only feasible method of carrying out such regulation is by way of permit. This alone saves the ordinance in the case at bar even if it had been based on the park section of the city empowering act alone (*Laws of New Jersey, 1917 Ch. 152, art. 36, sec. 2 at p. 452*) and had omitted the blood curdling words of the more general power repeated in the ordinance itself.

What is the constitutional scope of this easement of assemblage? Or to put it another way does the right of free assembly bar any regulation of public meetings except the limited proprietary regulation just discussed? Under a literal application of the previous restraint doctrine of Blackstone, it does. We are aware that the Supreme Court has expressed its approval of the Blackstonian theory. *Patterson v. Colorado,* above cited, *Near v. Minnesota,* above cited, *Grosjean v. American Press Co.,* above cited, *Lovell v. Griffin,* above cited. These are, however, not strictly cases of public meetings and we think that they and their doctrine are not consistent with what we have seen to be a limitation implicit in the right of free assembly. This limitation is the sovereign's interest in the public peace. *Liberty of the Press, Speech and Public Worship, Paterson,* above cited, *Dicey's Law of the Constitution,* 4th Ed., above cited, *Restrictions on the Right of Assembly,* 42 Harvard Law Review 265, above cited, *Public Order and Right of Assembly,*

47 Yale Law Review 404, above cited, *The Right of Assembly*, 9 N. Y. U. Law Quarterly Review 1, above cited.

Our decision in the case at bar does not, however, as we see it entail a final decision of this question. For we believe that the justifiable condemnation of previous restraints on public meetings and a salutary interest in the public peace are reconcilable by a procedure that is not being followed in Jersey City. As it is not followed, the invocation of the ordinance against the plaintiff applicants is in violation of the free assembly guaranteed by the First Amendment of the Constitution and must be restrained.

We deem this to be the correct constitutional procedure. Before refusing the permits the municipal authorities must have proof (reviewable, of course, in the courts) that the present applicants at least have spoken in the past in such fashion that audiences similar to those to be reasonably expected in Jersey City have indulged in breaches of the peace. If that proof were made, we think that either a copy of the speech to be currently delivered could be required and censored in the light of the reasonable apprehensions of disorder of "firm and courageous" city officials, or else the speakers could be bound over to keep the peace and be of good behaviour. The adjectives "firm and courageous" will be recognized as those of the law pertaining to unlawful assembly and seem to us for that reason appropriate here. *Halsbury's Law of England*, 2nd Ed. Vol. 9, p. 312, *The Law Relating to Riots and Unlawful Assemblies*, Vol. 35 The Legal Observer 469, *The Law Relating to Unlawful Assemblies*, Vol. 26 The Legal Observer, 545, *Riots, Routs and Unlawful Assemblies*, Vol. 3 American Law Magazine (article 6) 350, *Suppressing of Riots by Military Interference*, Vol. 9 The Law Magazine 66, *International Responsibilities of States*, Vol. 8, *The American Journal of International Law* 802, *Riot—Concert of Action—Acts of Violence by Two of Unlawful Assembly Constitutes 'Riots'*, Vol. 13 Virginia Law Review 329, *The Law Relating to Riots*, A. H. Brodkin, 3rd edition, *State v. Butterworth* 104 New Jersey Law 579.

The practice of binding over although useful is not as common in this country as it is in England.

> "When magistrates are satisfied by evidence that if such persons are allowed to proceed with the proposed meeting a breach of the peace is likely to be caused, they may call upon the persons in question to enter into recognizances on their own behalf and in addition, if the Court thinks fit, to find other persons to enter into recognizances as sureties for them, that they keep the peace or be of good behaviour."
>
> Law of Public Meeting, Mann and Llewellyn, Research by Committee of Haldane Club.

> "Take the case of an organization which has a demonstration with a slogan without question and in fact provokes disorder. The police under the conditions which already exist can say to the promotors next time they come for a permit. 'The last time you had one you put those words up and they caused a row, and if you are going to have this procession you must give an undertaking that you will not have anything of the kind again.' That would be all right, but if the police have to ask for all these emblems, banners and flags to be exhibited and then exercise a censorship, I suggest they would be put in an impossible position."
>
> House of Commons Debates, Vol. 318, p. 163.

And see *Assembly When Unlawful,* 26 Solicitors Journal 689; The *King v. Sandbach, Ex p. Williams* 2 K. B. 192; *Police Powers and Public Meetings,* 6 Cambridge Law Journal 175, above cited. We need hardly add that the record in the case at bar discloses nothing about the happenings at previous meetings addressed by the plaintiff applicants.

We inserted the qualifying "at least" in the last paragraph because it leaves open a much debated question. Should the speaker's words be judged from the standard of a court's view of their effect on an average audience constituted as the particular gathering or should they rather be considered from the aspect of their effect on a say weak-

minded or malicious audience. We must recognize a certain ability to withstand provocation. Otherwise we have not freedom but indifference. Moreover a pandering to possible audiences leads to mob censorship. On the other hand, must blood be shed in the effort to convert those possibly impervious to conversion? The question is again that matter of balance. We agree with the earlier English cases and hold that the speaker's own conduct is the criterion. If he observes the decencies of discussion, he should be given the full protection consistent with the strength of the local guardians of public safety. The question has been much discussed in England. In the case of *Beatty v. Gillbanks*, 9 Q. B. D. 308, dealing with the breaking up of meetings of the Salvation Army by a so-called Skeleton army, the learned justice said:

> "What has happened here is that an unlawful organization has assumed to itself the right to prevent the appellants (Salvation Army) and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition, and the question of the justices whether the facts stated in the case constituted the offence charged in the information (unlawful assembly) must therefore be answered in the negative."
>
> p. 314-315.

The doctrine was affirmed in *Wise v. Dunning* [1902] 1 K. B. D., p. 167, where the preventive arrest of a protestant agitator was approved on the grounds that he had used language insulting to the Catholic religion, in neighborhoods inhabited largely by Catholics. In the recent case of *Duncan v. Jones*, [1936] 1 K. B. D., p. 218, the Lord Chief Justice turned the flank of these decisions in upholding an inspector of police (Jones) in preventing Mrs. Duncan from holding a meeting outside an unemployment training center. The evidence showed that there had been disturbances

at previous meetings held by Mrs. Duncan but did not indicate the character of the language used by her. These three cases have been discussed and the last one criticized by a learned author writing in 6 Cambridge Law Journal, above cited, p. 175, Dr. Wade says at page 181 and 179:

> "Nor need the police as regards meetings generally, and apart from the question of obstruction to the highway by street meetings, have greater power than could be prescribed by enacting the distinction between Beatty v. Gillbanks and Wise v. Dunning, whereby police interference is authorized where insulting or abusive language takes place, but is not permitted simply on account of expression of opinion in circumstances which may expose the speaker to attack from outside."
>
> "The case thus leaves the law in the unsatisfactory position that it is for the police to decide whether a political party can organize a meeting in a district where its opponents are known to be hostile. The apprehensions of a single policeman based upon the fears of somebody else may apparently be decisive."

And see also the opinion of the Lord ordinary in the case of *M'Ara v. Edinburgh*, [1913] Session Cases 1059, 1070:

> "The proclamation if effectual would dispense with the necessity of both trial and conviction and would subject a citizen to disabilities merely because the Magistrates in their private room had come to the conclusion that his conduct was calculated to produce obstruction or breach of the peace."

Our position does make past conduct a cause of future restraint. We are aware of the fact that this is censorship. This was pointed out in articles criticizing the decisions of the courts in the cases of *Trinity Methodist Church South v. Federal Radio Co.*, 62 F. (2d) 850, certiorari denied 53 Supreme Court Reporter 317, *KFKB Broadcasting Association v. Federal Radio Commission*, 47 F. (2d) 670 (Dr.

Brinkley's station) and *U. S. v. Burleson,* 255 U. S. 407, the learned authors saying:

> "The only reason that past conduct was a matter of any concern is because it was assumed that future conduct would be the same . . . This is not something resembling censorship, it is censorship in fact, the very essence of it. To say under these circumstances, that because past releases had not in fact been subjected to prior scrutiny, therefore there was no censorship, is a misconception of the practical effect of the decision as well as of what constitutes censorship."
>
> 1 Journal of Radio Law, p. 441, 470.
>
> "It is mere quibbing to say that it is not censorship to refuse the renewal on the basis of past conduct, since the refusal intended to prevent what might be said over the station in the future—the most effective sort of censorship."
>
> 1 Duke Law Journal, p. 49, 50.
>
> "Because the paper had published forbidden matter for the five preceding months, it was likely to continue doing so."
>
> 21 Georgetown Law Journal, p. 35, 161, 186.

and see also *46 Harvard Law Review 987* and *22 Kentucky Law Journal 634.*

Such censorship has been upheld by the United States Supreme Court in the case of the mails (*U. S. v. Burleson,* 255 U. S. 407, above cited; and see also *Lewis Publishing Co. v. Morgan,* 229 U. S. 288) and impliedly in the case of the radio Shuler Broadcasting case, Matter of Shuler, 292 Pacific, 481 (certiorari being refused). In those cases the action sustained went far beyond the view we have here expressed for the allegedly objectionable newspaper and orator were thrown out of the mails and off the air respectively. It is true that mechanical considerations and by definition spot character of news make the submission of advance copy either destructive of efficiency or else creative

of bureaucracy. This is not true of the delivery of speeches. They might suffer in spontaneity but there are those who think that the listening public would welcome the compensating gain in thoughtfulness.

Before proceeding to a consideration of the American cases it may be of interest to make some examination of the way in which the same problem is dealt with in the legal system of the other nations. We cannot and of course do not offer any of this foreign law as a binding constitutional precedent here. We think its citation serves two purposes, both of them at least moderately useful. First, because to learn by that form of experience which is example, whether good or bad, is standard for us erring humans and comparisons whether odious or not are certainly helpful. Second, the practices of government in other countries properly belong in the laboratory of political science which, as we have said, we believe is pertinent to the interpretation of any charter of government written in general terms.

In setting forth the foreign authorities we notice that we have already dealt with the mother country, England. That is because we need hardly say her legal system is directly relevant to ours and to our Constitution. We make only this comment on the law we are quoting. We find the same disagreement as to the proper method of regulating public meetings that exists in our country and in our cases. That division is between the democracies and the autocracies verbam sap.

A Democracies

France.

1. In French:

(a) "A-t-on jamais reglemente le droit de respirer? Le droit de parler et de se reunir lui parait etre due meme ordre. Les abus et les bagarres doivent evidemment etre reprimés et la police qui rode toujours aux abords des meetings se doit d'intervenir en cas de

paroles seditieuses ou menacantes ou si l'on en vient aux coups."

p. 13.

(b) "Il (le législateur) peut exiger une declarat tion prealable, mais il ne peut point subordonner les reunions publiques a une autorisation prealable. Il peut, il doit meme interdire les reunions sur la voie publique, parce qu'elles entraveraient la circulation publique et qu'il peut et doit limiter la liberte de chacun pour protéger la liberte de tous. Enfin, il peut organiser la constatation et la repression des delits pouvant etre commis dans les reunions publiques. S'il va audela, il excede ses pouvoirs, il porte atteinte a la liberte de reunion."

p. 277-278.

Les Meetings—Essai sur les Caracteres Politiques et Juridiques de la Liberte de Reunion en Angleterre by Paul Mousset.

2. TRANSLATED:

(a) Has one ever regulated the right of breathing? The right of speaking and of assembly seems to fall in the same category. Abuses and riotings are manifestly to be suppressed by the police, who are always present at the meetings and intervene whenever seditious or menacing words are used or if there is any fighting.

(b) He (the legislator) can require a preliminary notice but he cannot subject public meetings to a permit. He can, he often should, forbid meetings on the public streets, because they are dedicated to the public passage, and so he should limit the liberty of each person in order to protect the liberty of all. Finally, he can bring about the discovery and repression of crimes likely to be committed at public meetings. If he does

more than that, he goes beyond his powers. He limits the liberty of public assembly..

see also the *Constitution of Spain*, 1931, art. 31, 38.

Ireland, Constitution 1922.

"Art. 9. The right of free expression of opinion as well as the right to assemble peaceably and without arms and to form associations or unions is guaranteed for purposes not opposed to public morality. Laws regulating the manner in which the right of free assembly may be exercised shall contain no political or religious or class distinction."

Brazil.

"In a case decided in 1917 (Accordao No. 4,313, of July 11, 1917), the court held that the police had power to localize the meetings by indicating the place or places where they might be held, and to prohibit them whenever they had adequate grounds to fear that public order would be disturbed or when the purpose of a meeting was manifestly criminal. In such cases the promotors of a meeting may invoke the remedy of the habeas corpus, the court then entering into the question whether the grounds alleged by the police were sufficient to justify their action."

"Against this decision, Ruy Barbosa protested in the federal senate on the ground that it adopted the policy of prevention, forbidden by the constitution, instead of the policy of repression, which limits itself to holding persons responsible for acts performed, in the abuse of their liberties. Thereupon, in a similar case decided in 1919, the supreme court reversed its position and denied the power of the police to designate the place in which the meeting shall be held."

Constitutional System of Brazil, James, p. 148.

B Autocracies

Italy, Constitution of 1848.

"Art. 32. The right to peaceful assembly without arms, is recognized, subject, however, to the laws that may regulate the exercise of this privilege in the interest of the public welfare. This privilege is not applicable, however, to meetings in public places or places open to the public which shall remain entirely subject to police law and regulation."

Germany.

1. Under the Prussian Constitution of 1850.

"Art. 29. All Prussians shall be entitled to meet in closed rooms, peacefully and unarmed, without previous permission from the authorities.

"But this provision does not apply to open-air meetings which shall be subject to whatever restrictions the law may prescribe even with respect to previous permission from the authorities."

2. Under the Weimar Republic.

"Article 123. All Germans have the right to assemble peaceably and unarmed, without notice or special permission.

"Assemblies in the open (freiem Himmel) can be Imperial Statute, be made subject to notice and can be forbidden in case of immediate (unmittelbar) danger to the public safety.

By a decision of the *Reichsgericht* (56 Entscheidungen des Reichsgerichts in Strafsachen, 184) it was said that a requirement of previous permission was inconsistent with this article 123, and void.

3. Under the present Reich.

"The law continued in this posture until 1932, when pursuant to article 48 (2) of the Constitution,

Hindenburg promulgated an emergency decree, providing for police supervision of all public meetings." RGB, 1932, 1, 548.

"In 1933, another emergency decree of Hindenburg's, A. Hitler Chancellor, (RGB, 1933; 1, 35) was passed providing for notice of all open air meetings, for police supervision, for prohibition in case of direct danger, and for complete prohibition upon the order of the Minister of the Interior. A week or so later, an emergency decree suspended Articles 114, 115, 117, 118, 123, 124, 158 of the Constitution, i. e. substantially the whole Bill of Rights" RGB, 1, 1933, 183 Systematische Übersicht Uber 71 Jahrgänge Reichsgesetz blatt 1867-1938.

We return now to our native shores and the cases in our courts. We find that the box-office score seems to be approximately 6 to 3 in favor of unrestricted administrative censorship. *Commonwealth v. Davis*, 39 N. E. 113, (Massachusetts), *Fitts v. Atlanta*, 49 S. E. 793, (Georgia), *Love v. Phelan*, 87 N. W. 785 (Michigan), *People ex rel Doyle v. Atwell*, 133 N. E. 364 (New York), *Duquesne City v. Fincke*, 112 Atl. 130 (Pennsylvania), *People v. Smith*, 188 N. E. 745 (New York). See also *47 Yale Law Journal* 404, p. 413. We do note, however, that the learned Supreme Court of New Jersey failed to mention three cases, *In re Frazee*, 30 N. W. 72 (Michigan), *State v. Coleman*, 113 Atl. 385 (Connecticut), and *Anderson v. Tedord*, 85 So. 673 (Florida). These three cases are those included in our minority and at least squint in the direction which we are proceeding. It is true that some of the cases on the majority side talk feelingly of discrimination and its wickedness. In our view such talk is lacking in realism. We can not find the discrimination necessary for the operation of the privileges and immunities clause of the Constitution on the case at bar and the reported opinions give us the impression that other judges have been similarly baffled. One might suspect or even have a moral certainty but the plain fact is discrimi-

inatory minded city officials do not put it in the newspapers. This thought has been brought out in several of the law review articles previously cited.

> "To subject the right or privilege of assembly to the uncontrolled discretion of an administrative official is to invite discrimination aganst those who held and express theories or ideas repugnant to the community generally."
>
> Limitations on the Right of Assembly, 23 California Law Review p. 180, above cited, p. 192.

> "Unfortunately, no effective means of preventing arbitrary or discriminatory exercise of such power seem available, although it has been suggested that a writ of mandamus might be used."
>
> Restrictions on the Right of Assembly, 42 Harvard Law Review p. 265, above cited, p. 267.

An analysis of these majority cases reveals this situation. In the year 1886 the high court of Michigan struck down an ordinance saying:

> "It is only where power is given to license that permissive action can be left to particular cases. If this were allowed in the case of processions, it would enable a mayor or council to shut off processions of those whose notions did not suit their views or tastes, in politics or religion, or any other matter on which men differ. When men in authority have arbitrary power, there can be no liberty."
>
> In re Frazee, above cited, p. 76.

Ten years later one Davis saw fit to ignore an ordinance of the city of Boston requiring permits to speak on Boston Common. This ordinance also prescribed a permit or license for various other activities such as firing cannons, vending merchandise and giving entertainment. The ordinance was manifestly reasonable and constitutional. It

comes squarely within our theory that parks or commons are for the recreation of the public and would-be speakers as well as would-be cannon shooters and would-be Punch and Judy demonstrators must submit to regulation. Brother Davis was not refused a permit for the excellent reason that he did not ask for one. If he had, he might have been advised with respect to the place at which he should enlighten the citizenry in order that others not interested in his exposition might have an opportunity to enjoy themselves by avoiding him. Mr. Davis' zeal, in the words of Midshipman Easy's commanding officer, led him to speak anyway and to make, by the same token, we respectfully suggest, most of the opinion of the learned Massachusetts Supreme Court dictum. In other words the discussion of the municipal power to forbid speaking in public places absolutely is not necessary to the decision.

The Davis case was appealed to the United States Supreme Court and is found reported in 167 U. S. 43. That august body naturally did not affirm on the opinion below. They did, however, adopt part of the reasoning of the Massachusetts Court. In so far as that reasoning is dictum below it is dictum above. More than that follows from the fact that the decision of the Supreme Court was rendered in 1896. At that time the United States Supreme Court felt that free speech was not protected by action against the states. We discussed this in an earlier portion of this opinion. So in the Davis case we find Mr. Justice White expressly placing his holding on that ground:

> "The Fourteenth Amendment to the Constitution of the United States does not destroy the power of the States to enact police regulations as to the subjects within their control."
>
> p. 47.

Any other language in the opinion becomes in consequence not only dictum but double dictum. It is entitled to the weight attaching to the lightest utterances of the members

of our final tribunal but it is not binding either on us or on them.

The condition of the authorities, then, boils down to this. The Davis case dammed the flow of a stream of precedents that had the earmarks of giving a reasonable easement of assemblage in public places. This is apparent because the Davis case is cited in every one of the subsequent cases holding its way. It appears to be cited furthermore without much internal examination. We find no reference to the matters just discussed. Our interpretation of them may be right or it may be wrong but it is assuredly relevant. If the dictum of the Davis case falls, the cases following it take the same course, and the numerical minority becomes the majority.

Whatever we have said about the regulation of public meetings applies, a fortiori, to the display of placards by pickets or anyone else desirous of persuading the passer-by. The test is the same one of provocation and breach of the peace. Whatever differences exist are in favor of no previous restraint. A placard coming from the pen is easier of confiscation than words coming from the tongue. Spoken words have that quality of excitement or incitement lacking in cold print. Finally, there is a contagion in predetermined gatherings lacking among casual wayfarers. The position of the city official being that placards admittedly harmless in inscription are prohibitable qua placards. This issue need not be resolved and the prohibition of placards must be restrained. It is worthwhile noting that some of the discussions in Parliament on the English Public Order Bill revolve around provocation by placard and such legends on banners as, "Down with the means test", "Down with British imperialism", *House of Commons Debates* above cited.

To put these theoretical matters in more practical form. Our decree will run in favor of the plaintiffs and will enjoin the defending officials of Jersey City from in any way interfering with the plaintiffs in their right 1) to be and move about freely in Jersey City; 2) to distribute leaflets and circulars of a character similar to those being distributed

at the time of the institution of this suit or of a substantially similar character; 3) to address public meetings in the parks of Jersey City subject only to the city's right to carry out the recreational purpose of those parks by arranging convenient times and places; 4) to display placards of the character of those displayed at the time of the institution of this suit or of a substantially similar character in or on the public places of Jersey City. We are not passing upon the claims advanced by the plaintiffs under the National Labor Relations Act. This because we issued our injunction on March 15, 1937 in favor of some of these same plaintiffs and in favor of others in legal positions precisely similar to others of these plaintiffs. That injunction adjudicated the same or substantially, similar issues arising under the National Labor Relations Act, to those of this litigation. Our decision in that matter was appealed to the Circuit Court of Appeals for the Third Circuit and is still undecided in that court. Therefore, whether technically res adjudicata both courtesy and efficiency demand our abstention until we receive enlightenment from on high.

Two concluding matters. We appreciated the cooperation of counsel for both sides, through the sometimes difficult proceeding. We feel that they are trying with us to solve a problem important, as we began by saying, to democracy. We have no final pride of opinion about our own solution. We do offer one admonition. The American tradition of brief writing has always seemed to us a meagre one and preclusive of real research. We suggest that the various bar associations and public libraries contain a wealth of material other than that found in text books and reported cases.

We hope that our failure to mention Jersey City's specific form of allergy has been noticed. It had reference to a supposed doctrinal infection of the plaintiffs or some of them. We offered our court as a humble forum for the purpose of calling witnesses under the fears and safeguards of the judicial process, in order that this ghost, if it is a ghost, might be forever exorcised or that this monster, if it is a

monster, might be finally slain. This offer was not accepted and we are left with hearsay, some of it not single but triple. This hearsay may be relevant on the issue of the mental condition of the officials and people of Jersey City. It is plainly no proof of the ultimate facts. If the plaintiffs or any of them wish or need to be heard in the eyes of Jersey City or of any other part of the United States, they must accordingly seek that cleansing elsewhere. A fact which, incidentally, obviates any consideration of that other cleansing required by courts of equity. *Goldman v. Rayburn,* 36 Pa. County Court Reports, 581; *Friends of New Germany v. Eastmead,* 116 N. J. Equity 487. The doctrine is difficult of application and has been criticized as applied to the obscurities of related sin. *48 Harvard Law Review* 507, *15 Virginia Law Review* 275, *8 Texas Law Review* 307.

Finally let us say this court happens to be as much or more personally allergic to the mentioned infection as the defendants or their constituents. We think it economically unworkable and worse than that we think that the methods seemingly pursued in its propagation are abhorrent to all true believers in democracy. Eugene Lyons, whom we understand to be an experienced and originally sympathetic newspaper reporter ends his most interesting book, *Assignment in Utopia,* in these words:

> "No plan for economic salvation must be accepted if it is diseased with disdain for life. Ultimately Russia will not be judged by how much bread it has given its people—by that standard other countries and other systems may be far more successful—but by how much freedom, self-respect, equality, truth and human kindness it has brought into the world."

We close with the suggestion made by a distinguished British statesman in the course of the Debates on the Public Order Bill several times referred to. He said in speaking about Sir Oswald Moseley's Fascists, "Why make martyrs out of clowns?" and we add wicked clowns at that.

DISCUSSION.

(Filed November 2, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

EQUITY E-5865.

Committee for Industrial Organization, et al.,
Plaintiffs,

v.

Frank Hague, &c., et al.,
Defendants.

Newark, N. J., Wednesday, November 2, 1938.

Before: HON. WILLIAM CLARK, J.

Appearances:

SPAULDING FRAZER, ESQ., MORRIS L. ERNST, ESQ., DAVID STOFFER, ESQ., BENJAMIN KAPLAN, ESQ., for plaintiffs.

JAMES A. HAMILL, ESQ., CHARLES HERSCHENSTEIN, ESQ., EDWARD J. O'MARA, ESQ., JOSEPH C. GLAVIN, ESQ., JOHN A. MATTHEWS, ESQ., for defendants.

THE COURT: Is there anything before the Court? I suppose, Dean Frazer, you are the moving party.

MR. FRAZER: Well, I didn't understand, sir, that it was in the nature of a motion. I understood that your Honor said you would be glad to have counsel appear before him, and as the agent of the Court, I conveyed that information to my opponents.

We have submitted certain conclusions of law, findings of fact, and the form of a proposed decree. In doing so, we endeavored, in the light of your Honor's opinion, to frame the findings of fact and the conclusions of law, and neces-

sarily the decree based upon them, from the standpoint of what we conceived to be your Honor's wishes under the opinion. Certain matters we naturally have omitted, as we regarded them rather in the nature of dictum than as a matter of finding. I refer particularly to the case of what the press has referred to as "pre-censorship"; and we have no finding of fact in that regard, nor have we any conclusion of law in that regard, nor is it carried in the decree. Aside from that, the matters are, I think, scarcely subject to dispute. They are the uncontradicted evidence of the plaintiffs' case. There being no defense interposed, there was very little dispute. And we have endeavored to summarize as well as we can those portions of the facts which seemed to be relevant to the opinion filed by your Honor, as an act of service to the Court rather than as an expression of our views on some of the mooted questions.

THE COURT: Well, I assume, of course, Dean Frazer, that you are acting under the new Rule 52 of Civil Procedure, which takes the place, as I understand it, of Rule 70 (e)—is it? Yes, Rule 70 (e), which requires——

MR. FRAZER: 70½.

THE COURT: 70½, yes— which requires findings of fact and conclusions of law. I assume, of course, that in any case, where findings of fact and conclusions of law are filed, they relate themselves to the facts of the particular case, and I didn't know that the press had referred to anything in my opinion as "pre-censorship."

MR. FRAZER: Well, as I——

THE COURT: Let me finish.

MR. FRAZER: Pardon me.

THE COURT: I suppose that you have reference to my discussion of the regulation of public meetings.

MR. FRAZER: Yes, sir.

THE COURT: In which I said that it was my opinion that if the decencies of discussion had been observed on past oc-

casions by the speaker, he would be entitled to speak. Of course, in this particular case there was no proof in my view that any of the particular applicants had not observed the decencies of discussion. Therefore, no finding of fact or conclusion of that law on that point was necessary.

I assume that is what you referred to.

MR. FRAZER: Yes; and I didn't wish to put the word "pre-censorship" in your Honor's mouth. It was a convenient way of referring to the references of the press to that portion of your Honor's opinion.

THE COURT: Well, that is the reason I spoke about it, because it was a word that I did not use, and I think I correctly stated what I did say.

MR. FRAZER: And might I say I think there is some difference, as I construe the two rules, between the practice under the old equity Rule 70½ and the present civil procedure rule.

THE COURT: Well, you most kindly referred me to the correct section this morning.

MR. FRAZER: Yes.

THE COURT: And I had a chance to read it.

MR. FRAZER: I think there is this distinction at the present time: There being no requirement for a submission of findings of fact, in order to appeal on the basis of the actual findings, the duty of counsel is somewhat different under the new rule than it was under the old rule. I take it under the old rule it would have been our duty to have asked your Honor definitely to find certain acts. Under the new rule, I take it that it is your Honor's finding, and that counsel, not having to ask for definite findings, is acting more as a servant, may I say, of the Court, aiding him on the record.

I wanted to make that distinction clear, between the old rule and the new rule of civil procedure.

THE COURT: Well, it is a little hard to tell whether the old rule is changed or not. I have been reading it this

morning. It does refer to findings of fact but does not apparently make them mandatory, so far as I can see.

MR. FRAZER: I think it makes them mandatory, sir; but I think you will notice that counsel has the right to appeal although he may not have submitted findings, or may not have made any requests to find. I think therein lies the distinction in the old and the new rule.

THE COURT: Well, in any event, I have here proposed findings of fact and proposed conclusions of law, which, as I understand it, have not been until this time furnished to your opponents. Is that correct?

MR. FRAZER: No, sir; they were only completed last night at about eleven-thirty; and I don't know whether there was an available copy for my opponents or not.

THE COURT: Have you got them now, Mr. Hamill?

MR. HAMILL: No, if your Honor please, this of course is a notice of motion. We are here in response to a notice of motion served on me by Mr. Frazer, on me as attorney for the defendants, by Mr. Frazer, attorney for the plaintiffs. And I was rather surprised to hear him say that it wasn't a motion. It was in response to this notice of motion that we presented ourselves here this morning, and present ourselves here now.

Now, there was a colloquy between the Court and counsel as to the content of the conclusions of law and statement of facts presented by counsel. Unfortunately we cannot participate in it for the reason that we did not get a copy of the conclusions of law and findings of fact which counsel for the other side has presented to the Court. Now this is a very important case. I need not expand upon that phase of the matter; and it is a case which has occupied the Court for weeks; one of great public interest, in which great fundamental rights of the American people are involved, particularly the rights of these defendants as public officers. Now, we contend that we should have been served

with copies of the statement of facts and of the conclusions of law; and we ask now that we receive permission to study them and find out what comment or suggestion or criticism we have to make on them. And this will require time. I would ask your Honor for a week, because that would be none too long, but I understand that under the rules I am restricted, of course, to five days; and therefore I ask that we receive a copy of the form of the decree, the conclusions of law and the statement of facts, and that we have five days to study them, and then come back here and make such suggestions or comments or criticisms or objections regarding them as to us may seem proper.

THE COURT: Dean Frazer, will you give them copies right away?

MR. FRAZER: Yes, sir. We were having some extra copies made. I am not certain whether we have any complete ones here. But might I ask Mr. Hamill, sir, whether the defendants have prepared any statement or findings of facts?

MR. HAMILL: No; we are not the moving parties in this case, and we did not.

MR. FRAZER: Well, I think Mr. Hamill and I disagree as to what the practice is. I gave him not a notice of a motion but a statement that we would appear before your Honor for the purpose of settling the statement of facts and the conclusions of law, and also the final decree. I do not understand that under the rule it is our duty, since we are absolved by the rule itself from the necessity of asking for findings, to submit to opposing counsel such findings. I regard them as a mere aid to the Court; and the act which we performed in preparing these is an act which was as well within the power of the defendants to have done also. I am somewhat surprised that they haven't made available to your Honor their interpretation of the facts in the case in view of your Honor's opinion. That is what we endeavored to do, and we didn't feel that it was in the nature

of a controversial matter between us, but rather as an aid to the Court.

MR. HAMILL: Now, I am very, very——

THE COURT: Well, let's not——

MR. HAMILL: I merely want to make a remark. I am very sorry for the solicitude and dolefulness of counsel for the plaintiffs over our failure to submit a copy of the same papers, or a copy of the conclusions of law and a statement of facts, and the decree. While that may be the practice, it is not the positive practice. I regret, of course, that we didn't call Mr. Frazer into conference with us, but while they have taken two or three sides all through the trial, I suppose that at the end he would remain with the plaintiffs. And so——

THE COURT: Mr. Hamill, you remember what I said about "verbal amenities."

MR. HAMILL: Well, my learned friend——

THE COURT: You remember what I said in my opinion about "verbal amenities."

MR. MATTHEWS: I do.

MR. HAMILL: Well, I am giving you now an illustration of what would be a very illustrative "verbal amenity." But at any rate, we ask for time in order to save the time of the Court and to refrain from indulging in argument, which would lead to nothing practical. I repeat my motion and request before the Court that we receive five days for the purpose of studying the papers presented by counsel, by the attorney for the plaintiffs, Dean Frazer, and that then, at the end of five days, the Court determine what are the facts established in the case, what are the conclusions that should be drawn, the conclusions of law, and what the form of the decree should be.

THE COURT: Well, as I read the practice, Mr. Hamill, I think it is the duty of the Court to make the findings of

fact and the conclusions of law, and of course enter such decree as he may think appropriate and just. Naturally, the Court is glad to have the assistance of counsel for both sides. It has already had the assistance of counsel for the prevailing party, which probably is appropriate, as they were the prevailing party. Therefore it is the Court's ruling that before midnight on Friday night you submit such criticisms of these findings or such alternative findings both of fact and conclusions of law, such criticisms of the decree—of course, not a substitute decree, but such criticisms of the decree proposed, as you may see fit. The Court will then immediately proceed to draw up its own findings of fact, conclusions of law, and decree, with, as I say, the gladly received assistance of counsel for both sides.

MR. FRAZER: Might I suggest, in following out your Honor's reference to the amenities, we have just served our opponents, or given to our opponents—I don't wish to use the word "served"—with much pleasure copies of the papers which we have handed to your Honor, and I would appreciate it very much if our opponents would let us have the advantage of their contribution to the matter.

MR. MATTHEWS: At the same hour that you gave yours to us?

MR. FRAZER: Perhaps. You mean at 2:15?

MR. HAMILL: In other words, Dean Frazer did with great grace something he would have to do out of necessity. But we, however, will not delay so long in presenting our criticisms to him.

THE COURT: Now, can the Court add one more "verbal amenity" and repeat its thanks to counsel for both sides, expressed in its opinion, for their co-operation in trying to solve this problem.

The Court is adjourned.

MR. FRAZER: Before the Court adjourns, might I ask when we might anticipate your Honor's actual action?

THE COURT: I shall work with as great expedition as possible.

MR. HAMILL: Before midnight on Friday night.

MR. FRAZER: No, I mean the action of his Honor.

THE COURT: With as great expedition as possible. I shall break my custom and be here on Saturday, in other words.

OBJECTIONS TO THE FORM OF PROPOSED DECREE.

(Filed November 5, 1938.)

The defendants respectfully object to the form of the decree proposed by the plaintiffs upon the ground that the provisions therein contained not only go beyond the findings and conclusions of the Court in the opinion filed by the Court, but have in many respects entirely changed those findings and conclusions and decrees relief to which they are not entitled under the opinion.

The defendants respectfully submit that the plaintiffs at most are entitled to injunctive relief in accordance with the definite conclusions expressed by the Court on page 63A of the Court's opinion. The Court states:

> "To put these theoretical matters in more practical form. Our decree will run in favor of the plaintiffs and will enjoin the defending officials of Jersey City from in any way interfering with the plaintiffs in their right 1) to be and move about freely in Jersey City; 2) to distribute leaflets and circulars of a character similar to those being distributed at the time of the institution of this suit or of a substantially similar character; 3) to address public meetings in the parks of Jersey City subject only to the city's right to carry out the recreational purpose of those parks by arranging convenient times and places; 4) to display placards of the character of those displayed at the time of the

institution of this suit or of a substantially similar character in or on the public places of Jersey City."

Defendants do not admit that the plaintiffs are entitled to any injunctive relief whatsoever and directing the Court's attention to the specific matters suggested as proper subjects of injunctive relief, we contend:

1. That an injunction enjoining the defendants from interfering with the plaintiffs' right to be and move about freely in Jersey City is not justified because there was no evidence in the case that the defendants at any time interfered with plaintiffs' right to be and move about freely in Jersey City.

2. No decree should be issued against the defendants interfering with the distribution of leaflets and circulars because the evidence conclusively established that since the Griffin case the defendants have not interfered and moreover testified that they will not interfere with the distribution of leaflets and circulars.

3. If an injunction is to issue against the defendants restraining them from prohibiting meetings in public parks, they should be given the right to adopt the procedure prescribed by the Court on page 50 of the Court's opinion.

4. The defendants should not be restrained from interfering with the displaying of placards because that matter was not seriously urged nor argued by the parties in this case.

5. The best example of the plaintiffs' attempt to exceed the terms of the opinion may be found at paragraph 4 of the proposed decree in which the plaintiffs provide that unless the defendants adopt a policy of prohibiting public speaking at all times in the streets of Jersey City that the same provisions with regard to the issuing of permits in parks must be applied to the issuing of permits in the streets of Jersey City. This proposed term is nowhere to be found in the opinion of the Court.

The defendants in making the comments and objections to the form of the decree hereinabove set out, do so merely to point out to the Court the inaccuracy of the form of the decree submitted by the plaintiffs and the comments and objections are in no wise to be construed as a waiver of defendants' objections to the substance of the proposed decree or of their right to appeal therefrom.

JAMES A. HAMILL,
Attorney for Defendants.

COMMENTS AND OBJECTIONS TO FINDINGS OF FACT SUBMITTED BY PLAINTIFFS.

(Filed November 5, 1938.)

It has been impossible, because of the insufficient time, to check the testimony referring to each of the proposed findings submitted by the plaintiffs. For that reason the defendants must content themselves with making the following comments without specific reference to the liber and page of the record.

Our comments are directed to the paragraphs in the same order in which they have been submitted;

1. There was no evidence as to the purposes of the CIO, nor did the evidence disclose that all of the individual plaintiffs were engaged in labor organizational activities in Jersey City.

2. There was no evidence as to the purposes of the A. C. L. U.

3. There was no evidence that Mayor Hague has general supervisory powers over all city departments, or that his policies are the policies of the Director of Public Safety.

4. There was no evidence that Mayor Hague publicly stated his opposition to the plaintiffs or the number of associations affiliated with the plaintiffs prior to November 29, 1937.

5. The findings contained in paragraph 5 are not within the scope of the pleadings.

6. No evidence to sustain the findings in this paragraph.

7 (a) No evidence to sustain the findings in this paragraph.

(b) No evidence to sustain the findings in this paragraph.

(c) No evidence to sustain the findings in this paragraph that the exclusion of plaintiffs was pursuant to the unrestricted judgment of the defendants or their police.

8. The evidence cannot justify the findings in this paragraph, particularly because even if the evidence can be believed there was only one instance of any alleged surveillance of any union headquarters. Further, the findings, with regard to searching automobiles, cannot be justified in view of the testimony that searching resulted in the arrest of four (4) members of the CIO who had a gun in their possession.

9. No evidence to sustain the findings in this paragraph.

10 (a) This finding is only partially justified by the evidence because the evidence is quite clear that after the pronouncement by the Supreme Court of the United States in the Griffin case, the defendants did not enforce the city ordinance prohibiting the distribution of circulars.

(b) The finding in this paragraph cannot be justified because the distribution of circulars occurred prior to the Griffin decision.

(c) This finding can only be applicable to the period prior to the Griffin decision.

(d) No comment.

(e) No evidence to justify this finding.

(f) No evidence to justify this finding.

11 (a) No evidence to justify this finding.

(b) No evidence to justify this finding.

(c) No evidence to justify this finding.

12 (a) No Comment.

(b) No evidence to justify this finding.

(c) No evidence to justify this finding.

13 (a) No evidence to justify the finding of this paragraph. On the contrary the testimony clearly establishes that the defendants enforced the ordinances of the city in strict conformity of the provisions of such ordinances.

(b) The finding of this paragraph is not justified by the evidence. On the contrary there was no evidence of consultation of the Director of Public Safety with other defendants prior to denial of permits.

(c) No comment.

(d) No evidence to justify this finding.

(e) No evidence to justify this finding.

(f) No evidence to justify this finding.

(g) No evidence to justify this finding.

(h) No evidence to justify this finding. We also respectfully submit that this finding is couched in such language as to lead to unfair conclusions.

(i) No evidence to justify this finding.

(j) No evidence to justify this finding.

(k) There is no proof justifying the conclusion of this paragraph.

(l) No comment.

(m) This finding is not justified by the evidence, but, on the contrary, there was proof concerning the acts therein alleged.

(n) No evidence to justify this finding.

(o) This finding is not justified by the evidence but, on the contrary, there was proof concerning the facts therein stated.

(p) This finding is not justified by the evidence but, on the contrary, there was proof of the facts alleged in this paragraph.

(q) No evidence to justify this finding.

14(a) No justification for the finding contained in this paragraph. The fact is that the testimony amply discloses that searches are made in order to apprehend criminals and prevent the commission of crime.

(b) No evidence to substantiate the finding in this paragraph. The fact is, in the entire record, only one car of the plaintiffs' was searched and that car bore a Pennsylvania license and the action of the occupants was sufficient to arouse suspicion of the police officer who made the search.

15. No evidence to justify this finding.

16. No evidence to justify this finding.

17. No evidence to justify this finding. The testimony further discloses that there is no justification for a conclusion with regard to the future conduct of the defendants.

18. No evidence to justify this finding.

19. No evidence to justify this finding.

20. No evidence to justify this finding.

21. The record discloses that the allegations of the second separate defense were fully supported by the evidence.

OBJECTIONS AND COMMENTS TO THE PROPOSED CONCLUSIONS OF LAW.

(Filed November 5, 1938.)

1. No comment.

2. The conclusions contained in this paragraph are not justified by the evidence in this case.

3. The conclusions contained in this paragraph are not justified by the evidence in this case.

4. The conclusions contained in this paragraph are not justified by the evidence in this case.

5. The conclusions contained in this paragraph are not justified by the evidence in this case.

6. The conclusions of this paragraph cannot be justified because the evidence discloses that the defendants have never interfered with lawful, peaceful picketing.

7. No comment.

8. The Ordinance of April 15, 1930 has no reference to placards.

9. This conclusion of law is contrary to the Court's opinion.

10. Such a conclusion of law is unjustified from the evidence.

11. This conclusion of law is not justified from the evidence in this case.

12. This conclusion of law is not justified from the evidence in this case.

13. No comment.

14. The evidence in the case clearly established that the plaintiffs have an adequate remedy at law that they have not established a cause of action entitling them to relief in this court and that they are debarred from relief by acts

heretofore performed by them and therefore come into court with unclean hands.

15. Plaintiffs are not entitled to an injunction against any of the defendants in this case.

JAMES A. HAMILL,
Attorney for Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed November 7, 1938.)

FINDINGS OF FACT.

A. PARTIES.

1. Plaintiff Committee for Industrial Organization is a voluntary unincorporated committee having its principal office in the District of Columbia. Plaintiffs Steel Workers Organizing Committee, United Electrical Radio and Machine workers of America, and United Rubber Workers of America, are voluntary unincorporated labor organizations affiliated with plaintiff Committee for Industrial Organization. Plaintiff William J. Carney is director for the State of New Jersey of plaintiff Committee for Industrial Organization, and plaintiffs William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley are field representatives of the Committee for Industrial Organization under the supervision of plaintiff William J. Carney.

2. Plaintiff American Civil Liberties Union is a membership corporation having its principal office in the City of New York.

3. Defendant Frank Hague is Mayor of the City of Jersey City, defendant Daniel J. Casey is Director of Public Safety of Jersey City, defendant Harry Walsh is Chief of Police of Jersey City, and defendant The Board of Commissioners of Jersey City is the governing board of Jersey

City. Defendant Frank Hague, as mayor, has general supervisory powers over all city departments and by his admission and in fact the policies of these departments, including the policies of the department of public safety, are his policies.

B. The Purposes of the Parties.

1. Plaintiffs, the Committee for Industrial Organization, Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America, and United Rubber Workers of America, were established and are maintained for the purpose of bringing about the organization as labor unions of unorganized workers in various industries and with the further purpose of causing said labor unions to exercise the normal and legal functions of labor organizations such as collective bargaining with respect to the betterment of wages, hours of work and other terms and conditions of employment.

2. Plaintiff, American Civil Liberties Union, was established and is maintained for the purpose of taking such measures as it deems lawful and essential for the enforcement of the rights secured by the First Amendment and the Fourteenth Amendment of the Constitution of the United States. The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. Defendants, Frank Hague, Daniel J. Casey and Harry Walsh, were elected or appointed and are in office for the purpose of taking part in the administration of the government of the City of Jersey City.

4. The purposes of the plaintiffs above set forth are in the letter and spirit of our Constitution and laws and of the theory of our democratic institutions.

5. There is no competent proof that the plaintiffs or any of them had any other purposes and more particularly there is no competent proof that the plaintiffs or any of them incited or advocated the overthrow of the government of the United States or the State of New Jersey by force of violence or incited or advocated the commission of any other acts in violation of the laws of the United States or the State of New Jersey.

C. Liberty of the Person.

1. The defendants acting in their official capacities have adopted and enforced the deliberate policy (a) of excluding and removing from the limits of Jersey City various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs, (b) of exercising personal restraint over various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs and (c) of interfering with the right of locomotion on and the free access to public streets, highways, thoroughfares, parks and places of the City of Jersey City of various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs.

2. This exclusion, removal, personal restraint and interference has been carried out by force and violence and without the consent of and contrary to the will of certain of the individual plaintiffs, various agents of the plaintiffs, Committee for Industrial Organization and American Civil Liberties Union and varous persons acting in sympathy or in concert with them, although all of those persons were at the time of such exclusion, removal, personal restraint and interference acting in an orderly and peaceable manner.

3. This exclusion, removal, personal restraint and interference of persons by force and violence is carried out

by members of the police force of Jersey City on their own administrative fiat without authority of law and without bringing the persons, excluded, removed, personally restrained and interfered with as speedily as is reasonably possible before any judicial officer in order that such persons may be afforded a judicial hearing or day in court.

D. Liberty of the Mind.

Circulars, Leaflets and Handbills.

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert with them from distributing any circulars, leaflets or handbills and more particularly Plaintiffs' Exhibit No. 1 (handbill), No. 4 (leaflet), No. 7 (circular), and No. 32 (circular) in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City passed January 22, 1934.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The circular, leaflets and handbills whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the circulars, leaflets and handbills thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of

circulars, leaflets and handbills by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

Placards

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert with them from distributing placards in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City adopted February 19, 1935.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The placards whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the placards thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of placards by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

E. Public Meetings.

1. The defendants in their official capacities have adopted and enforced the deliberate policy of forbidding the

plaintiffs and persons acting in sympathy or in concert with them, from communicating their views to the citizens of Jersey City through the holding of meetings or assemblies in the open air and at public places.

2. On or about December 17, 1937, plaintiff American Civil Liberties Union duly applied under and pursuant to the ordinance of the City of Jersey City adopted April 16, 1930, for a permit to hold an outdoor assembly in a public place in the City of Jersey City, to be addressed by Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst; and on or about December 23, 1937, plaintiff Committee for Industrial Organization similarly applied for a permit to hold an outdoor assembly to be addressed by Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler. Said applications were severally denied by defendant Daniel J. Casey upon consultation with and approval of the other defendants herein.

3. There is no competent proof that the parks of Jersey City or any of them are dedicated for purposes other than the general recreation of the public.

4. There is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications for the permits above referred to.

5. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications of the permits above referred to at which said public meetings or assemblies any breach of the peace whatsoever had occurred.

6. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications for the permits above referred to at which said speakers or any of them had either in their choice of words or in their manner of uttering the words chosen violated the reasonable canons of decent discussion or given reasonable apprehension to believe that breaches of the peace would result from the utterance of the said words.

7. There is competent proof through Plaintiffs' Exhibits Nos. 10 and 11 that the City of Jersey City has granted permits various persons other than the plaintiffs proposing to speak at meetings in the public streets of the said city.

F. JURISDICTIONAL ALLEGATIONS.

1. The rights of the plaintiffs and each of them, interfered with and frustrated by the defendants, above set forth, have a value as to each plaintiff in the excess of the sum of $3000, exclusive of interest and costs.

2. The enforcement of the defendants' policies above set forth, as against the plaintiffs herein, results in irreparable damage to them and the threat of continued enforcement of said policies against them involves a threat of manifold and repeated prosecutions for alleged offenses and manifold and repeated invasions of their rights.

3. There is no competent proof that the plaintiffs Committee for Industrial Organization and American Civil Liberties Union are such organizations or that the individual plaintiffs have so conducted themselves as to forfeit the protection of a court of equity.

CONCLUSIONS OF LAW.

1. The Court has jurisdiction over this suit under Section 24 (1) of the Judicial Code (28 U. S. C. A., Section 41 (1), and under Section 24 (14) of the Judicial Code (28

U. S. C. A., Section 41 (14), and under Section 24 (12) and (14) of the Judicial Code (28 U. S. C. A., Section 41 (12) and (14).

2. The defendants' official policy and acts respecting exclusion, removal and personal restraint are in violation of Section 1, and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the interstate commerce clause of Article 1, Section 8 of the Constitution of the United States.

3. The defendants' official policy and acts respecting interference, free access to, locomotion and communication of thoughts on the public streets, highways, thoroughfares, parks and places of the City of Jersey City are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The defendants' official policy and acts respecting distribution of literature on the public streets, highways, thoroughfares, park and places are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City, passed January 22, 1924, under which the defendants have purported to act, is, with respect to such distribution of literature, held to be void, unconstitutional and of no force or effect.

5. The defendants' official policy and acts respecting placards are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City adopted February 19, 1935, under which the defendants have purported to act, is held to be void, unconstitutional and of no force or effect.

6. The defendants' official policy and acts respecting public assemblies are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance

of the City of Jersey City, adopted April 15, 1930, under which the defendants have purported to act, is in its application void, unconstitutional and of no force or effect.

7. The plaintiffs herein have established and proved a cause of action under the Constitution of the United States, and under Section 43 of Title 8 of the United States Code, and under Section 47 (3) of Title 8 of the United States Code, reinforced by Section 51 of Title 18 of the United States Code.

8. The separate and distinct defense in point of law set forth in the defendants' answer herein, to the effect that certain of the defendants were improperly joined as individuals, is held to be insufficient in law upon the face thereof.

9. The allegations contained in the second paragraph added to the defendants' answer by their amendment to answer are held not to constitute a valid defense and to be insufficient in law as a defense upon the face thereof.

10. The plaintiffs have no adequate remedy at law, and have established a cause of action entitling them to relief in this court of equity, and are not debarred from such relief by any acts heretofore performed by them, and do not come into this court of equity with unclean hands.

11. The plaintiffs are entitled to a permanent injunction against defendants in terms and form as in the subjoined judgment and decree.

WILLIAM CLARK,
U. S. D. J.

FINAL JUDGMENT AND DECREE.

(Filed November 7, 1938.)

It is on this seventh day of November, 1938, ORDERED, DECREED and ADJUDGED as follows:

The defendants Frank Hague individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, the Board of Commissioners of Jersey City, and the agents, servants, employees, deputies, and officers of the defendants and each of them, and all persons associated with or under the direction, supervision or control of the defendants or any of them are hereby perpetually enjoined and restrained:

A. LIBERTY OF THE PERSON.

1. From directly or indirectly excluding or removing the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them from the City of Jersey City.

2. From directly or indirectly exercising any personal restraint over the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them except in so far as such personal restraint is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law.

3. From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right of free access to and locomotion on the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in

so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law.

B. Liberty of the Mind.

1. Speaking other than at public meetings.

From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right to communicate their thoughts to other persons in and about the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law and except further this paragraph has no bearing upon the right of the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them to speak at public meetings which right is hereinafter dealt with.

2. Circulars, leaflets and handbills.

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants, or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the circulation or distribution by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City of pamphlets, circulars, handbills, emblems or any written or printed matter whatsoever; provided that (1) the said circulars, leaflets and handbills are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451), and provided (2) that the distribution of the said circulars, leaflets and hand-

bills is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

3. Placards.

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the carrying of, or the display by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City, of placards, signs or any written of printed matter whatsoever, whether by walking to and fro with such written or printed matter affixed to their persons, or held in the hands, or otherwise; provided that (1) the said placards, signs or any written or printed matter whatsoever are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) and provided (2) that the distribution of the said placards, signs or any written or printed matter whatsoever is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451.

4. Public Meetings.

(a) From placing any previous restraint upon or in any other manner whatsoever directly or indirectly interfering with the plaintiffs or any of them in respect to the holding of meetings or assemblies in the open air and in parks dedicated for the purposes of the general recreation of the public provided that an application for a permit to hold such meetings by or on behalf of said plaintiffs or any of them has been made three days in advance of such meetings and provided further that such permit may be refused these plaintiffs or any of them only for the reason that the

particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks.

(b) From refusing to or withholding from the said plaintiffs or any of them applications for said permits as hereinabove provided such protection at said meetings or assemblies as is necessary to secure to said plaintiffs or any of them the opportunity to hold such meetings without interference from or interruption by such persons as may be present at said meetings provided only that such protection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City and provided further that the duty of the defendants to afford such protection to the holding of such meetings or assemblies as may be necessary for their peaceful continuance may be terminated by words or conduct of the plaintiffs or any of them in violation of existing law.

(c) From continuing their heretofore expressed refusal to grant permission to Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst, and Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler upon applications dated December 17 and 23, 1937, respectively, and from continuation their heretofore expressed refusal to grant those said named speakers all the rights set forth in the preceding two paragraphs of this decree for injunction.

(d) From refusing to the plaintiffs or any of them the rights set forth in the three preceding paragraphs of this decree for injunction in so far as such rights may be sought with respect to public meetings on any of the public streets, highways, thoroughfares or places of the City of Jersey City (other than public parks) and unless and until the defendants acted in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares

or places of the City of Jersey City provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpretation by the defendants of the acknowledged easement of public passage over any of the said public streets, highways, thoroughfares or places of the City of Jersey City.

5. FORMAL.

From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person to commit or attempt to commit any of the things enjoined by this decree, or not to do anything required by this decree to be done.

WILLIAM CLARK,
U. S. D. J.

November 7, 1938.

NOTICE OF APPEAL.

(Filed November 7, 1938.)

Notice is hereby given that the defendants herein appeal from the whole of the final judgment and decree entered herein on the seventh day of November, 1938, to the United States Circuit Court of Appeals for the Third Judicial Circuit.

JAMES A. HAMILL,
Attorney for Defendants.

Dated November 7, 1938.

PROCEEDINGS AT TRIAL.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

IN EQUITY.

Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union,
Plaintiffs,

v.

Frank Hague, Individually and as Mayor of Jersey City, Daniel J. Casey, Individually and as Director of Public Safety of Jersey City, Harry Walsh, Individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City,
Defendants.

Appearances:

SPAULDING FRAZER, ESQ., MORRIS L. ERNST, ESQ., DAVID STOFFER, ESQ., BENJAMIN KAPLAN, ESQ., for the plaintiffs;

JAMES A. HAMILL, ESQ., CHARLES HERSHENSTEIN, ESQ., EDWARD J. O'MARA, ESQ., JOSEPH C. GLAVIN, ESQ., for the defendants.

Before HON. WILLIAM CLARK, *J.*, at the Post Office Building, Newark, New Jersey, on Wednesday, June 1, 1938.

THE COURT: All right, gentlemen.

MR. HAMILL: Do we understand the case is called, your Honor?

THE COURT: Yes, it is, Mr. Hamill.

MR. HAMILL: I now move for a dismissal of the bill of complaint filed in this cause and will present my motion.

THE COURT: Is it in writing?

MR. HAMILL: Paragraphs——

THE COURT: Is it printed? Is it typewritten?

MR. HAMILL: It is typewritten, your Honor.

THE COURT: Could you hand me a copy?

MR. HAMILL: Yes.

THE COURT: You can state it but I can follow it from a copy.

(Copy of paper handed to the Court.)

MR. FRAZER: Have you an extra copy for us?

MR. HAMILL: No, we haven't. We only have two copies.

Paragraphs 1 to 4 of the bill of complaint state that the bill of complaint is filed by the CIO, a voluntary committee of labor organizations, the Steel Workers Organizing Committee, a voluntary organization affiliated with the CIO, the United Electrical Radio and Machine Workers of America, an affiliate of the CIO, a national unincorporated labor organization, the Union Rubber Workers of America, an affiliate of the CIO, also an unincorporated labor organization, William J. Carney, a director of the CIO, five individual field representatives of the CIO, and the American Civil Liberties Union, a membership corporation organized to protect the rights of freedom of speech, the press and the assembly.

Paragraph 5 states that the defendants are Frank Hague, Mayor, Daniel J. Casey, Director of Public Safety, Harry Walsh, Chief of Police, and the Board of Commissioners. The members of the Board of Commissioners are not named.

Paragraphs six and seven. It is alleged that the suit is of a civil nature in equity arising under the Constitution

and the amount in controversy exceeds $3000. That the suit is brought to redress the deprivation of the rights and privileges secured by the Constitution and for the equal rights of citizens.

Paragraph eight. The first charge in the bill is that the defendants deny to the plaintiffs the right to hold lawful meetings upon the allegation that the plaintiffs were Communists or a Communistic organization and were therefore required to obtain a permit under the 1920 ordinance. It alleges the ordinance is invalid.

Paragraph nine of the bill charges that the policy of the defendants is in pursuance of an unlawful plan and conspiracy to forbid all CIO meetings—I would like to emphasize that last statement—"in pursuance of an unlawful plan and conspiracy to forbid all CIO meetings."

Paragraph ten. In order to test the refusal to grant the CIO a permit, the plaintiff American Civil Liberties Union attempted to rent a meeting hall, but were unable to procure the same.

Paragraph eleven. In furtherance of the unlawful plan and conspiracy to deprive certain workers, labor organizations and others of their civil rights, the defendants announced they would not permit picketing in cases of labor disputes except for——

THE COURT: Mr. Hamill, are you going to read it all?

MR. HAMILL: Yes.

THE COURT: Then you do not have to stand while doing so.

MR. HAMILL: Thank you, your Honor.

——except where a bona fide dispute or justifiable strike was involved and would eject persons considered undesirable. On numerous occasions they have carried these deportations into effect.

Paragraphs twelve and thirteen. Prior to November 29, 1937, defendants notified the CIO they would not be

permitted to distribute leaflets pursuant to circular distribution ordinance. Nevertheless, plaintiffs announced they would distribute the circulars on November 29, 1937; that they had headquarters at No. 76 Montgomery Street and on the morning of November 29, 1937, police officers stopped and attempted to turn back CIO members; that individual plaintiffs and their automobiles were searched and CIO literature confiscated; that the distributors were forced to leave by ferry boat. Some were arrested. That the distributors returned to their headquarters at No. 76 Montgomery Street for the purpose of resuming the distribution, but were prevented by the police to leave the building. They were then transported to various points outside of Jersey City.

Paragraph fourteen. That since November 29, 1937, the unlawful activities of the defendants continued to date; that the CIO has been prevented from continuing its organizational activities in Jersey City; that on December 27, 1937, Mayor Hague publicly issued a false statement to the effect that the object of the CIO is to crush, by terrorism.

Paragraphs fifteen and sixteen. On December 19, 1937, plaintiff, Carney, issued a statement of his intention to hold a CIO outdoor meeting, but a permit was refused; that on December 17, 1937, the American Civil Liberties Union applied for a permit for an open air meeting but was refused a permit.

Paragraphs seventeen and eighteen. Individual plaintiffs are employees of the CIO and are desirous of informing employees of industries of their rights; that all the activities of plaintiffs are to be carried out in a peaceful, law-abiding manner, but that defendants, acting unlawfully, have committed the aforesaid illegal acts for the purpose of preventing plaintiffs from the privilege of renting meeting places, using the streets of the city in the same way as others and from holding public meetings.

Paragraph nineteen. Plaintiff's charge that defendants have systematically discriminated against the plaintiffs in the application of the city's ordinances.

Paragraph twenty alleges that the activities of the defendants have been—I emphasize that—pursuant to an unlawful conspiracy to injure, oppress, threaten and intimidate the citizens of America, including the plaintiffs, with intent to prevent their exercise of their rights and privileges secured by the Constitution.

Paragraph twenty-one. Defendants threaten to continue the unlawful acts, which unlawful acts violate the provisions of the Constitution and the National Labor Relations Act, as well as the Civil Rights Act.

Paragraph twenty-two. The entire object of the bill, as expresed in paragraph 22, alleges plaintiffs have suffered from the threatened acts of the defendants, serious and irreparable injury to their property, personal rights and immunities, and that should defendants be restrained they will be enjoined from the commission of unlawful acts and will be confined to the lawful discharge of their duties as officers of Jersey City and will suffer no damage to their personal or official acts.

Paragraph 23 alleges that to justify the Federal jurisdiction the bill alleges the value of the property rights of each individual plaintiff in his employment, which is being interfered with, exceeds $3000; that the plaintiff, CIO, has property rights exceeding $3000 which are being interfered with, and that the other plaintiffs also are damaged to the sum of $3000.

Paragraph 24 describes the philosophy of the CIO and states that defendants' acts have been a part of the plan to thwart and forestall such organization of workers in Jersey City.

Now, a summary of the charges in the bill deals with the following subject matter:

1. A denial of the right to plaintiff to hold meetings, pursuant to an unlawful plan and conspiracy to forbid all CIO meetings, which conspiracy is being carried out by intimidating owners of halls in order to prevent them from letting the same to plaintiffs.

2. That in furtherance of the unlawful planning and conspiracy, the defendants announced they would not permit picketing in cases of labor disputes except where a bona fide dispute or justifiable strike was involved and would eject persons considered undesirable.

3. That refusal on the part of the defendants to permit the CIO to distribute leaflets and other literature concerning organizational activities and that Mayor Hague publicly issued a false statement that the object of the CIO was to crush by terrorism.

4. The refusal on the part of the defendants to issue permits to plaintiff, Carney, and to plaintiff, American Civil Liberties Union, for outdoor meetings.

5. That the defendants have systematically discriminated against the plaintiffs in the application of city's ordinances and that the activities have been pursuant to an unlawful conspiracy to injure, oppress, threaten and intimidate the citizens of America, including the plaintiffs so as to prevent them exercising the rights and privileges secured by the Constitution.

Now, if your Honor please, it is quite evident that the entire bill of complaint therefore is predicated upon an unlawful plan and conspiracy on the part of the defendants and the bill seeks to enjoin the defendants from the commission of unlawful acts and to compel them to lawfully discharge their duties as officers of Jersey City.

Now, on that proposition it is well settled that a court of equity will not enjoin the commission of a crime. Equity has no power by a mandatory injunction to decree that criminal acts be enjoined—and these are criminal acts. Manifestly if equity had that power, it would not only be assuming jurisdiction where a completely adequate remedy at law is available but would take over criminal jurisdiction and try criminal offenses in proceedings to punish for contempt, should there be a violation of the decree. In other words, the defendant would not in such a case have the right to be

indicted by a grand jury and tried by a jury of his peers but he would be punished by the application of equitable process.

THE COURT: Well, as I understand this bill, Mr. Hamill, it does not intend to charge a crime.

MR. HAMILL: Sir?

THE COURT: It does not intend to charge a crime. "Conspiracy" is used in the sense of the word "plan."

MR. HAMILL: It does, we contend it does charge a crime.

Now, secondly, it has been well settled that an injunction does not lie to compel public officials to perform duties either with respect to the enforcement of ordinances or the criminal law, or to prevent the commission of a crime, nor will they be compelled, by injunction, to exercise the rights and powers vested in them as public officials, except when such failure to act amounts to a breach of trust or a direct invasion of a property right resulting from a breach of trust.

In other words, such property rights must be involved.

This complaint is aimed to prevent the carrying out or the continuance of what plaintiffs claim is an unlawful plan or conspiracy. If this be true, the defendants are subject to indictment for conspiracy, which is a crime, both under the State and Federal law. So, also, the doing of the acts complained of, if true, subject the defendants to indictment for malfeasance in public office. If a crime has been committed, there is an adequate and proper remedy by means of the criminal procedure established both in the State and Federal jurisdictions; the remedy is distinctly not by injunction.

I desire also to call your Honor's attention to the fact that the plaintiffs, unincorporated associations, have no constitutional rights to conduct meetings, or by their agents to speak, and such rights cannot be protected, especially by an injunction in this court. Neither have incorporated bodies,

if your Honor please, the right to free speech. It has never been extended to corporations as such, but corporations will be protected where there occurs an infringement of their property rights.

It is also evident from the bill of complaint that the jurisdiction of this court is sought to be invoked on the ground that there are Federal constitutional questions involved in a controversy where each of the plaintiffs named is damaged to the extent of $3000. We claim that it is apparent from the face of the bill that no such amount can be involved in the present litigation. It deals with no tangible property rights which have a fixed monetary value.

It is also evident in this case——

THE COURT: Well, of course, on that point, Mr. Hamill, I take it the bill invokes the Constitution, which is not limited by——

MR. HAMILL: I don't hear your Honor.

THE COURT: I say I take it that on that point the Constitution of the United States is invoked rather than the jurisdictional amount.

MR. HAMILL: Well, the jurisdiction of this court under the Constitution.

THE COURT: You mean the Bill of Rights?

MR. HAMILL: It is also evidence in this case that any decree based upon the pleadings must be so framed as to compel the defendants to carry out the laws of this State or of the United States. An injunction of that sort cannot be sustained upon any theory. Any order or decree directing defendants, as is prayed for in this bill, to do what the law requires them to do is not feasible because every public official is bound to carry out the law and decrees which are not feasible cannot be made by a Court of Chancery. Take, for example, the allegations concerning the distribution of circulars. There is no allegation that the defendants have

not permitted distribution since the decision of the United States Supreme Court in the Griffin case in Georgia.

THE COURT: Well, if that appeared in the proof,——

MR. HAMILL: There is no allegation.

THE COURT: That is a matter of proof.

MR. HAMILL: —have not permitted distribution since that decision, which held an ordinance preventing the distribution of circulars is constitutional. That is, the distribution on the public streets. A decree against these defendants incorporating the rule laid down by the United States Supreme Court would merely be declaratory of the law as it now is and could serve no purpose.

The bill is also aimed to compel a course of conduct on the part of the officials not in presento but in futuro. Manifestly no decree can compel the future conduct of city officials. Each case must be determined separately and in a direct proceeding and not generally in an injunction proceeding.

In respect to the ordinance requiring permits for open air meetings, the highest court of our State has indicated the constitutionality of such an ordinance. In view of this pronouncement by our courts, each individual case should be determined by the adequate remedy provided in our State courts and not through injunction proceedings in a Federal court. And therefore it is our contention, and we now charge, that the complaint fails to disclose an equitable cause of action, and the court is without jurisdiction to hear and determine the cause, and we now move for all of these reasons which I have set forth to your Honor that the complaint be dismissed and that a decree of dismissal be entered.

THE COURT: Well, Mr. Hamill, as I understand the bill, it does not intend to charge a conspiracy in the sense of the criminal law. That wouldn't be the adequate way of describing it.

MR. HAMILL: We maintain that it does charge a conspiracy, which brings the defendants, according to the allegations, within the scope of the criminal law.

THE COURT: As I understand it, it is a bill to enjoin your preventing the distribution of pamphlets, interfering with the rights of organized labor, and then with respect to the rights of holding public meetings.

MR. HAMILL: But it——

THE COURT: I am in some doubt, myself, as to whether these unincorporated bodies are properly plaintiffs in an equity suit. As you will remember, we omitted them from the decree in the case last spring. You will remember that. However, that would seem to me something that would have to be decided at the time a decree was entered, if there was such a decree.

As far as the other points are concerned it would seem to me that I shall have to rule on them at the time the evidence is offered, if there is objection at that time.

The motion is denied. You may have an exception.

Which exception is hereby allowed and sealed accordingly.

(Sealed)

THE COURT: Proceed.

MR. FRAZER: I am somewhat handicapped in my opening. I had intended to open in a more logical way than I am able to do.

THE COURT: The best opening would be by calling your witnesses, I think.

MR. FRAZER: Very well, sir. Mr. Foley, take the stand.

MR. HAMILL: Now, if your Honor please. I want to bring this to the attention of the Court. There have been subpœnaed on the part of the complainant certain officials of Jersey City, the Mayor of Jersey City, the Director of Public Safety, and the Chief of Police. These are high offices

in the city government with very responsible duties to perform, and I wish to ask the court to inquire of counsel when in all probability he will need these witnesses, and if they are not needed this morning or even until tomorrow, that they be permitted to leave the court to tend to their official duties and return at the call of the Court. I do this for the reason that a statement appeared in one of the local newspapers charging that the mayor of the city was in contempt of court. Counsel on the other side made that statement, and your Honor knows that he was absent to the satisfaction of the Court and was at the call of the court whenever wanted.

THE COURT: Will you name the officials you wish excused, please?

MR. HAMILL: Mayor Hague.

THE COURT: Not by name but by their position. Will you ask, Mr. Frazer, what witnesses you wish excused and I am sure he will be glad to do it.

MR. FRAZER: I was going to say, if I might be permitted to——

MR. HAMILL: I don't want to ask it because I am not asking it as a favor, I am directing my question to the Court as a matter of right.

THE COURT: I will ask it then.

MR. FRAZER: I think there are certain matters which are coming out in court through the testimony of the witnesses and these other witnesses should hear it so as to be able to be interrogated about it directly without having to repeat it. I might say that I do not know in the course of the trial when I would want the officials in question. It depends very much upon the nature of the cross-examination, the length of the examination of the witnesses, and so forth.

It may be that the Court will desire certain witnesses not to be called or not to be further examined, their testi-

mony being merely cumulative on points which the Court feels have been fully proved. They are all matters of that kind. I might say that we have been waiting for this trial for many months.

THE COURT: I know it. I do not know what that has to do with it.

MR. FRAZER: It seems to me, on a plea of great busyness at this time, one of the public officials was out of the state for three months while we were waiting for him. He was recently subpœnaed at a baseball game; and the seriousness of the busyness does not seem to be such as to interfere with his attendance in this court.

THE COURT: Will you state: do you want the witnesses here during every minute of the proceedings?

MR. FRAZER: I would prefer to have them present, but if your Honor feels that that is unreasonable, I will leave the matter in your Honor's hands.

THE COURT: Will you state when you do want them?

MR. FRAZER: I am quite certain we will not call them today.

THE COURT: Not today?

MR. FRAZER: I think not.

THE COURT: Then do I understand that you agree that the officials of Jersey City are excused until tomorrow morning at ten-thirty

MR. FRAZER: I am not excusing them. If your Honor considers it unreasonable to have them in court, under the circumstances your Honor is at liberty to excuse them.

THE COURT: They are excused until tomorrow morning at ten-thirty.

DANIEL J. FOLEY, called and sworn on behalf of the plaintiffs, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Foley, you are one of the plaintiffs in this cause?

A. Yes, sir.

Q. And what were your general relations to the defendant CIO—to the plaintiffs, rather, the CIO on November 29, 1937?

A. I was a field representative of the Committee for Industrial Organization.

Q. And where were your headquarters, if any?

A. Newark, New Jersey.

THE COURT: You do not have to stand, Mr. Frazer, unless you are so inclined.

MR. FRAZER: Some of our Chancellors have gotten us in the habit of standing.

THE COURT: I think it is a very discourteous habit, myself.

Q. Your headquarters were in Newark, New Jersey?

A. Yes, sir.

Q. And on November 29, 1937, what were your activities, can you state them briefly?

A. You mean what occurred on that date?

Q. Yes, what did you do on that day?

THE COURT: I think, Mr. Frazer, we would like to know a little more about this man. Who are you? I mean how did you come to be connected with the CIO and what were your duties a little more in detail?

A. I was given this position as field representative of the Committee for Industrial Organization through the recommendation of the regional director of my home in West Virginia. I worked in West Virginia from July until the 26th day of November when I was transferred to New

Jersey under the jurisdiction of Mr. William Carney, regional director of the Committee for Industrial Organization for the State of New Jersey.

THE COURT: What is your trade?

THE WITNESS: Field representative.

THE COURT: But what do you do, what is your employment, what do you work at?

THE WITNESS: Machinist.

THE COURT: You are a machinist?

THE WITNESS: Yes, sir.

THE COURT: What were you doing in West Virginia, working as a machinist?

THE WITNESS: Up to the time I was given this appointment as field representative for the Committee for Industrial Organization.

THE COURT: Then you came to New Jersey?

THE WITNESS: Yes, sir.

THE COURT: And are you in the office of the CIO in Newark?

THE WITNESS: Yes, sir.

THE COURT: Are you a member of any union?

THE WITNESS: Yes, sir.

Q. What union?

A. United Mine Workers of America.

Q. Now, will you state briefly what you did on the 29th of November, 1937?

A. On the morning of the 29th of November 1937 I left Newark, New Jersey, at about five-thirty that morning in company with Mr. McGinn, Mr. Macri and Mr. Barry.

THE COURT: Now, Mr. Foley, when you use the names of people will you tell us who they are. We

don't know who they are. You do and we don't—when I say "we" I mean I don't know. So give us the history of those three men.

THE WITNESS: Mr. McGinn was a field representative for the Committee for Industrial Organization.

THE COURT: Is he to be a witness? When a man is to be a witness you need not elaborate.

MR. FRAZER: He at the present time is in Europe. I am afraid he will not be back in time, sir.

THE COURT: Who is he, can you tell us?

THE WITNESS: Mr. McGinn?

THE COURT: Yes.

THE WITNESS: He is a field representative for the Committee for Industrial Organization, the same as I was.

THE COURT: Is he from West Virginia, too?

THE WITNESS: No, he was working in the Newark office, Newark, New Jersey.

THE COURT: What is his trade, do you know?

THE WITNESS: I believe he is a seafaring man.

THE COURT: A sailor?

THE WITNESS: Yes, sir.

THE COURT: Is he a member of some maritime union?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, the next one.

Q. That is Mr. Macri.
A. Mr. Macri.
Q. Who is he?
A. That was Mr. Macri I was just referring to.

Q. Who is Mr. Macri?

A. Mr. Macri is a field representative of the Committee for Industrial Organization. I am not certain, but I believe he is a member of the United Mine Workers of America.

THE COURT: Is he to be a witness?

MR. FRAZER: He is in the hospital at the present time, sir. Whether he will recover in time to come I don't know.

THE COURT: Then there was one other man.

THE WITNESS: Mr. Barry. I understand Mr. Barry was a volunteer organizer for the Committee for Industrial Organization.

MR. HAMILL: You say you understand. Do you know?

THE COURT: Is he a witness?

MR. FRAZER: Mr. Barry is at present out of the jurisdiction. We have hopes of having him here.

THE COURT: What is his first name?

THE WITNESS: I don't know what his first name is.

MR. FRAZER: Walter Barry.

THE COURT: All right, now, we know who they are, as far as you know.

Q. Now, how did you come to go over there at five-thirty on the morning of November 19th?

A. We had instructions that there would be a meeting at 76 Montgomery Street in Jersey City.

Q. And what was the purpose of that meeting?

A. The purpose of that meeting was to distribute handbills announcing a meeting for the following Friday of that week.

Q. I show you a copy of a handbill and ask you if that is the handbill which you were distributing that day?

A. That is correct.

MR. FRAZER: I would like to offer it in evidence.

MR. HAMILL: May I inquire before it goes into evidence: Did you get up this handbill?

THE WITNESS: Did I get it up?

MR. FRAZER: Just a moment, sir; I think that is not proper examination on the exhibit. If he wishes to cross-examine, that is another matter.

MR. HAMILL: I am asking the question in order to find out if this the handbill and my first question is: "Did you get it up"?

MR. FRAZER: It is immaterial whether he got it up.

THE COURT: May I see it?

MR. HAMILL: I have a right to test his credibility as to whether he distributed that particular handbill.

THE COURT: Well, I suppose if he knows he might as well answer because we will want to know anyway. Do you know who got this up?

THE WITNESS: No, I could not say for sure. It was gotten up by the sanction of the Committee for Industrial Organization, that is all I know.

MR. HAMILL: How do you know that was the handbill you distributed?

THE WITNESS: Because I had them in my hand on that particular morning.

MR. HAMILL: Where did you get this particular copy that counsel has shown you?

THE WITNESS: His Honor just handed it to me.

MR. HAMILL: No, but before his Honor handed it to you, if your memory is good, it was handed to you by your counsel, wasn't it?

MR. FRAZER: Yes.

THE COURT: What we want to know, Mr. Foley, is: Is that the same handbill you were distributing that morning? By looking at it can you recollect that it was the same one?

THE WITNESS: That is correct, yes, sir.

MR. FRAZER: I might say that a copy of it has been attached to the bill of complaint and it has not been denied. I will offer it in evidence.

(Handbill marked in evidence Exhibit P-1.)

Q. I understand about five-thirty A. M. you went to Jersey City in company with these three gentlemen?

A. Yes, sir.

Q. Where did you go to?

A. 76 Montgomery Street.

Q. By what means did you come from Newark?

A. We left Newark in Mr. Macri's car.

Q. And did you notice anything on the streets of Jersey City as you were driving up to 76 Montgomery, in that vicinity?

A. I had never been in Jersey City before. As we passed the City Hall I inquired of the men in the car what was going on, all those cars parked around the City Hall with plain clothes men, apparently, in them. I would say there were approximately twenty cars lined up. I was informed we were getting the stage set for us.

MR. HAMILL: I ask that that be stricken out, what he was informed. We want to know what he knows, not what he was told.

THE COURT: Yes.

MR. FRAZER: It is just part of the general picture. I have no objection to its being stricken out.

Q. Now you then came to 76 Montgomery Street?

A. That is right.

Q. And what did you do then, Mr. Foley?

A. After we arrived at 76 Montgomery Street, Mr. Barry and I got out of the car and took a package of these bills up and entered 76 Montgomery Street. We went through the revolving doors and up to this meeting hall. We were to be followed by the other two men who accompanied us there, Mr. Macri and Mr. McGinn.

We were probably in the hall five minutes and a newspaper man came in and asked me, or told me, rather, that my two friends had been picked up as they were coming from the car with these packages.

MR. HAMILL: I wish Mr. Frazer could keep his witness from relating what someone else told him. All that is evidential is that a newspaper man talked to him.

THE COURT: That is all.

MR. FRAZER: I think it is more than that, sir. I think we are entitled to more or less of a verbal picture here.

THE COURT: But you cannot do it by hearsay. I am not much of an advocate of the rule in its strict application, still there is the hearsay rule.

MR. FRAZER: I think it is not strictly applicable to a court of equity where a jury is not present.

THE COURT: I am afraid the decisions are otherwise. I have often thought it would be better if they were not, but I am afraid we will have to observe the hearsay rule.

MR. FRAZER: It seems to me that this is part of the res gestae. We are picturing here the whole situ-

ation as it comes in, which will afterward be confirmed by actual testimony.

THE COURT: I think perhaps you had better confine it to actual testimony.

MR. FRAZER: Very well, sir.

Q. So that a newspaper man came in and made a report——

MR. HAMILL: A newspaper man told him something. He did not make a report.

THE COURT: May I ask you, Mr. Foley, what sort of a hall this was? Was it upstairs, downstairs or what?

THE WITNESS: It was upstairs from the street level.

THE COURT: Was it a large room?

THE WITNESS: A fairly large one, yes, sir.

THE COURT: As large as this court room?

THE WITNESS: Oh no, probably one-quarter as large.

THE COURT: Was there anyone in the room when you entered it?

THE WITNESS: Yes, sir.

THE COURT: Who were there

THE WITNESS: Representatives of the different international organizations were assembling there that morning.

Q. How many were there as long as you remained there?

A. Well, they kept coming. When I left the hall there were probably fifteen people in there.

Q. Now how long did you remain in the hall before you left?

A. I would say twenty minutes. As I entered the hall there was a phone call came to the hall and Mr. Barry answered the phone. The phone call was for Mr. Macri.

MR. HAMILL: I object. I object. There was a 'phone call. That is, the telephone rang and somebody went to it?

By MR. FRAZER:

Q. Did you hear the 'phone call yourself?

A. Yes, I heard the conversation.

Q. You heard the conversation?

A. Yes.

Q. And did you recognize the speaker?

A. Yes, sir.

Q. And who was the speaker?

A. Mr. Macri?

By MR. HAMILL:

Q. You mean the speaker on your side of the 'phone?

A. No.

Q. The speaker in the meeting room was Mr. Macri?

A. No.

THE COURT: No, he means on the other end.

A. (Continuing.) The man making the call.

THE COURT: Mr. Barry was on this end.

A. (Continuing.) The man who called to the hall was Mr. Macri.

Q. Where were you standing when the person——

MR. FRAZER: Now, it seems to me this is cross-examination.

MR. HAMILL: Well, it seems evidently a device by means of leading questions to bring it within some legal rule, that we ought to have some liberty to find out just what happened there.

MR. FRAZER: I think it is going to take us a long time, sir, if every question I ask is to be stricken.

MR. HAMILL: Not if they are within the rules of evidence; we will get along very rapidly.

THE COURT: If you question the accuracy of this witness' recollection, why then, I think——

MR. HAMILL: It is very evident that this 'phone call was related to this man by the person who answered the 'phone.

THE COURT: Did you answer it yourself?

THE WITNESS: No, I was sitting beside Mr. Barry at the desk when the 'phone rang.

THE COURT: Did you hear the voice on the other end?

THE WITNESS: Yes.

THE COURT: Did you recognize that voice?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

MR. HAMILL: Your Honor will grant me an exception?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

By MR. FRAZER:

Q. Now, after that did you remain in the hall some time? The man was Macri, I think, that was telephoning?

A. That's right.

Q. And did he come back to the hall?

MR. HAMILL: Oh, please don't lead him. Just ask him when did he come back, or did he.

A. Do you want me to relate the conversation over the 'phone?

Q. Yes, you relate—not the conversation; you heard Mr. Macri over the telephone. Now, you did certain things. Did you go out or did you stay there or what did you do?

A. We stayed in the hall until Mr. Macri returned to the hall.

Q. And how much longer was that, Mr. Foley?

A. Probably a half hour.

Q. He got there about what time, would you say?

A. About fifteen minutes till seven.

Q. Now, after his return what did you do, and your associates?

A. You want me to relate Mr. Macri's conversation in the hall or his——

Q. No.

THE COURT: Tell us what you did.

Q. Did he give you any instructions?

A. Yes, sir.

Q. And did you carry those instructions out?

A. Yes, sir.

Q. And what did you do, as a result of those instructions?

A. We left the hall.

Q. At what time?

A. I would say it was ten minutes of seven.

Q. And were you provided with any pamphlets or anything of that sort?

A. Yes.

Q. Now, tell just what happened from the time that you left the hall, who you left with, and what happened.

A. I left the hall in company with Mr. McGinn. We walked up the street, the fifty of us, I will say there was approximately fifty, two by two, to a place they called Harbor Side, where we were to meet these workers coming in to give them these handbills. As we arrived through the door going out onto the street there was quite a few police

and plain clothes men, who followed us down the street. I think we went about a block and a half, probably two blocks. When we got to this Harbor Side building we were surrounded by these officers. We were told to get going. It was impossible to get going because we were entirely surrounded. There was quite a bit of pushing and shoving, and then everybody was herded toward the ferry with instructions to get out. I didn't feel that I had any business in New York——

MR. HAMILL: Never mind your comments. Just let us have your testimony.

MR. FRAZER: Now, if it please the Court, I think that there should be objections made not instructions given to my witness.

THE COURT: All right.

MR. HAMILL: All right, I make it in the form of an objection.

THE COURT: Just tell us what happened.

A. When we got to this ferry the majority of the people protested that they didn't have any business on the ferry——

MR. HAMILL: I object to that.

MR. FRAZER: Well, that is part of the res gestae.

THE COURT: Yes, that certainly is. Go on, Mr. Foley. Go ahead.

A. Some of them protested on the grounds that they were residents of Jersey City, others protested on the grounds that they were residents of Newark.

MR. HAMILL: I object to that. That is a conclusion, that they objected on the grounds. If your Honor holds that it is part of the res gestae, then he should relate what they said, and your Honor will determine what the grounds were.

THE COURT: I don't suppose he remembers their exact words.

Just give the general tenor——

A: I couldn't give the exact words because there was too much confusion.

MR. HAMILL: Well, then, he is evidently drawing a conclusion.

THE COURT: Go ahead, Mr. Foley.

Q. All right. Some of them were protesting about going to New York because they didn't live there and others didn't want to go there, is that right?

A. Yes. I protested because I had no business in New York.

Q. Now, tell us what happened from there, Mr. Foley.

A. During this confusion there were several arrests made. Cars were pulling up, the people were being put into the cars, and the majority that was left turned around and went back to 76 Montgomery Street to this meeting hall.

Q. What did the police do as you were doing that?

A. When we were going back?

Q. Yes.

A. Well, during this confusion and pushing, these handbills were confiscated. I probably had thirty or forty in my hand, and they were jerked from my hand and torn in two. I was shoved against the wall——

Q. Who tore them from your hands?

A. An officer.

Q. You say you were shoved against the wall?

A. Yes, sir.

Q. Had you actually distributed any bills?

A. I had handed out two or three.

Q. All right.

A. We went back to 76 Montgomery Street. All these bills had been confiscated that was in our possession up till that time, and we got more of these bills from the hall,

started down and found the revolving doors of the building blocked by the officers. Two plain clothes men came through the door and searched us one by one; confiscated the bills again, left us out on the street. We were placed in cars.

Q. How many came out at a time onto the street?

A. They were let out two by two, one at a time. Of course, through the segments of the door.

Q. All right. Go on from there.

A. These cars pulled up on the sidewalk, these men were placed in the cars, taken away; we didn't know where; we couldn't get any information as to where they were being taken, what they were charged with. I asked several of the officers and received no reply. I was placed in a car with three other men and for some unknown reason, after I was in the car I was taken out of the car again.

Q. Who were the three men that were in with you, do you remember?

A. They were strangers to me. From there I went——

THE COURT: Do you know whose car it was, Mr. Foley?

THE WITNESS: No. I don't know exactly whose car it was.

THE COURT: I mean was it a police car or what?

THE WITNESS: I suppose it was a police car.

THE COURT: When you say you were placed in it, what do you mean by that?

THE WITNESS: I was placed in this car by two plain clothes men, and just as they were about to shut the door there was a conversation about Federal observers in the crowd, and I was—I don't know why—taken out of the car. Anyhow, I wasn't taken with the rest of them.

THE COURT: Go ahead.

A. (Continuing.) There were two or three of us went to the closest precinct. I believe the lady, in fact I know the

lady that was with us was a Miss Cox, Miss Nancy Cox. We walked out the street to this precinct, I not being familiar with it, never having been in the city before; and there was probably ten or twelve men, union men, in front of the door of this precinct, and I started up to the door—I was looking for Mr. McGinn. Mr. Barry and Mr. Macri, the men from the Newark office. As I went up to the precinct door the boys told me I couldn't get in, they wasn't admitting anybody.

MR. HAMILL: I object. I object to what the boys told him. That doesn't mean anything.

A. (Continuing.) The men that were in the hall, that had not been placed in the cars——

THE COURT: Go ahead.

Q. All right. Go ahead, Mr. Foley.

A. (Continuing.) I was very much interested in these three men in particular because they were from the Newark office, and when I walked up to the door they said, "There is no use trying to get in. They won't let you in."

So I had a sheriff's courtesy card with me and I presented that card at the door, and I was admitted. The man at the door directed me to a lieutenant's desk, I believe. I inquired for these three men and he sent me from there to the captain of the precinct on the second floor, where I inquired of the captain——

THE COURT: Do you remember his name, Mr. Foley? Give us names wherever you can.

THE WITNESS: No, I don't know the captain's name. They told me simply he was the captain.

A. (Continuing.) I inquired for these three men. He said that several of the men had been brought there but——

MR. HAMILL: I object to what he said.

MR. FRAZER: This is part of the——

THE COURT: Oh, yes, go ahead.

MR. HAMILL: What he said?

THE COURT: Go ahead. Go ahead, Mr. Foley.

Q. What did he say?

A. I told the captain that we were under the impression that these men were being distributed all over the city to different precincts and I would like to know where these three particular men were. He said he didn't have a list of the men brought in but he thought that I wouldn't have to look any farther, that the activities were to be centered there at that precinct. He asked me what particular interest I had in these three men. Then I told him that two of them were field representatives of the Committee of Industrial Organization. So he told me the court was open at nine o'clock, and to go down to the courtroom and get a seat, and I would see the proceedings myself. So I did. I stayed in the courtroom from the time court opened until it closed, about four o'clock that afternoon.

THE COURT: What was this court? Do you remember that?

THE WITNESS: It was the court in which Judge Botti presided.

THE COURT: That identifies it.

Q. What happened in the courtroom?

A. About 9:30 I saw these men brought in. Among them was Mr. Barry, Mr. McGinn and Mr. Macri, with eleven other men. Our attorneys asked the Judge to set the proceedings over for another day in order to give the counsel an opportunity to prepare the case. The motion was denied. Then they asked for a trial by jury. The motion was denied. Seven of the men were charged with distributing leaflets in violation of the city ordinance and sentenced to five days. The other six, including Macri, McGinn and Barry, were held for unlawful assembly and held under $1000 bail for action of the Grand Jury.

MR. HAMILL: Now, at this point, I presume that counsel is going to offer the records of the Court as to these proceedings to which this lay witness is now testifying. If he isn't, then I object on the ground that the best evidence——

THE COURT: Are there any records?

MR. HAMILL: —of these facts are the records of the Court.

THE COURT: Maybe there weren't any records. Were there?

MR. FRAZER: We would be very happy—we have a stenographic record, sir—we would be very happy to offer it.

MR. HAMILL: All right.

THE COURT: Then they should be offered.

MR. HAMILL: That is, a stenographic record, duly verified by whoever took the record.

Q. Did you have anything to do with the getting of the bail for these men?

A. No, sir.

Q. Now, you say these proceedings lasted until about four o'clock in the afternoon?

A. That's right.

Q. When did the judicial proceedings first start?

A. I would say it was probably nine-thirty; about two o'clock that afternoon our counsel asked for a thirty minutes recess for lunch. Even that was denied.

MR. HAMILL: I object to this. What is the relevancy? Is it the idea to show that the Court was unjust? Can you come into another courtroom and attempt to give your opinions on what the judge did?

THE COURT: Don't characterize it by saying "even." Just tell us what happened, do you see?

MR. FRAZER: I thought the witness had made no characterization.

THE COURT: He put in the word "even."

MR. FRAZER: Oh, "even."

MR. HAMILL: Well, evidently you were leading him into——

THE WITNESS: I didn't intend to do so.

MR. HAMILL: —facts which would mean a characterization. At any rate, may I inquire of the Court what is the purpose of this examination, that part of it which refers to the proceedings in the Court?

THE COURT: Well, we are going to have the proceedings, I take it.

MR. FRAZER: Yes, the proceedings will be brought.

Q. Was anything said about Mr. William J. Carney during the course of the court proceedings?

A. Yes, sir.

Q. By the Judge?

A. Yes, sir.

Q. Will you state what that was.

THE COURT: Well, isn't that in the record?

MR. FRAZER: I don't think it was on the record, sir.

MR. HAMILL: I object on the ground of immateriality.

MR. FRAZER: I think it is——

MR. HAMILL: The pleadings do not state any such facts.

MR. FRAZER: Well, we don't have to plead our evidence, as I understand it.

THE COURT: I will allow the question. Go ahead.

A. You want me to repeat that——

Q. Yes, please.

A. He said, "If William J. Carney is in this courtroom; and if he is, he has no business to be here, but in case he isn't, let the information be conveyed back to him that Jersey City wants none of Bill Carney nor none of his CIO hoodlums."

MR. HAMI : Now, I ask that that be stricken out. That is a reflection upon the Court. Are they going to offer proof that the Judge had no right to say that? Are they going to take the seat of justice and overrule Judge Botti——

MR. FRAZER: Certainly, the Judge had no right to say that. I think it is part of the whole picture.

MR. HAMILL: It is irrelevant and immaterial, and it is hearsay.

MR. FRAZER: It can be technically rebutted if it isn't true. Judge Botti can take the stand and say it isn't true.

MR. HAMILL: The point is that it is utterly irrelevant——

THE COURT: Well, I will first examine the record and see if it is there. I haven't got the record yet.

Q. What happened after that, Mr. Foley, as far as you had to do with it?

A. Well, I stayed there until Court adjourned, which was about probably four o'clock, four-thirty; then I returned to Newark.

Q. Now, you stated that you saw certain persons taken into cars down at the ferry and also in front of 76 Montgomery, if I understand correctly.

A. That's right.

Q. You don't know what happened to those persons except as you saw them in the police court?

A. The only persons that I knew or saw afterwards were the thirteen men who were brought into the courtroom.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Mr. Foley, you were the field representative in Virginia, were you, did you tell us?

A. West Virginia.

Q. In West Virginia. You were connected with what organization?

A. My last affiliation was the United Mine Workers of America, which I still retain.

Q. And before you joined the United Mine Workers of America, with whom were you affiliated?

A. I don't understand your question.

Q. Well, were you a member of any other organization?

A. Yes, sir.

Q. What is the name or what was the name of that organization?

A. Flint Glass Workers of America.

Q. Where have they their headquarters?

A. You mean the national headquarters of that organization?

Q. Yes.

A. Toledo, Ohio.

THE COURT: What are they? What sort of——

THE WITNESS: That is an A. F. of L. organization.

Q. And what was your office or position with that organization, the Glass Workers?

A. I was shop committeeman.

Q. You were what?

A. Shop committeeman.

Q. What are the duties of shop committeeman?

A. Well, the duties of the shop committeeman is to take up the grievances that arise among the workers and present them to the management for a hearing.

Q. And did you take up any grievances——.

THE COURT: Just a minute. What shop were you in?

THE WITNESS: That with the Owens Illinois Glass Company.

THE COURT: You didn't say that. The Owens Illinois——

THE WITNESS: The Owens Illinois Glass Company.

THE COURT: ——Glass Company.

Q. Were there any grievances while you were shop committeeman?

A. Yes.

Q. How many?

A. I couldn't say.

Q. Quite a number of them?

A. No.

Q. What were the grievances about?

A Well, grievances in connection with, oh, probably equal division of time among the workers on various things that pertain——

Q. Any strikes?

A. No, sir.

Q. Now, when did you first come to New Jersey?

A. I believe it was—it was the Monday, Monday before the 19th of November, whatever date that was.

Q. 1937?

A. That's right.

Q. And who sent you to New Jersey?

A. The Committee of Industrial Organization.

Q. Any particular officer?

A. Yes, I received instructions from Washington.

Q. Any particular officer in Washington?

A. From the office of John Brophy.

Q. Any particular officer in the office of John Brophy?

THE COURT: We don't know who John Brophy is, you see; we don't know officially. So will you state who he is?

THE WITNESS: John Brophy is the chairman for the Committee of Industrial Organization; chairman of the committee.

Q. What were the instructions you received?

A. To report to Newark, New Jersey, to Mr. William Carney, Regional Director for the State of New Jersey.

Q. How long has Mr. Carney, to your knowledge, been Regional Director in New Jersey?

A. I don't know.

Q. So that you were there from October the 11th or October 19th, was it, or rather November 19th, you first came to Jersey City?

A. It was the Monday previous to November the 19th, whatever date that was.

Q. And then on November——

A. Or the 29th.

Q. The 29th——

A. It would be the 22d, the 22d of November, I believe.

Q. You were sent for the purpose of testing the ordinance of Jersey City?

A. No, sir.

Q. Did you know there was an ordinance?

A. I didn't get your quetsion before that. Will you repeat it?

Q. Were you sent here to New Jersey to take part in movements to test the ordinance of Jersey City?

A. There was no mention made of testing the ordinance when I was sent here.

Q. You were told to put yourself under the direction of Mr. Carney?

A. That's right.

Q. How did you happen to come to Jersey City?

A. On that particular date, the 29th?

Q. On November 29th, when you did come.

A. It was understood and instructed that there would be a meeting at 76 Montgomery Street that morning.

Q. Who instructed you?

A. We were all instructed, at the regional director's office.

Q. When you say "all" whom do you mean?

A. The representatives of the various international organizations.

Q. Let us have their names.

THE COURT: He gave you three names, I think, Mr. Hamill.

You gave the three names already, didn't you?

Q. You mean McGinn, Macri, Barry—and who else?

A. No, those were three of the field representatives.

Q. Well, what other representatives were instructed? Give us their names.

A. I couldn't give you their names because I don't know them. I thought you asked what organizations were present at that meeting.

Q. Well, I ask you now who were the men who were instructed, You said "All of us got instructions," didn't you?

A. That's right.

Q. All right. Who were the "all"?

A. The only men that I was acquainted with was Macri, McGinn and Barry.

Q. And how many were there in number, who received instructions?

A. I couldn't begin to answer that question. There was——

Q. Where did you receive the instructions?

A. Newark, New Jersey.

Q. Where.

A. At the regional office of the Committee of Industrial Organization.

Q. Where is that?

A. Newark, New Jersey.

Q. Yes, but where?

THE COURT: He means what address.

Q. What street in Newark?

THE COURT: The address.

A. That would be at 15 William Street.

Q. That's at 17 William Street. That was where Mr. Carney had his headquarters, was it?

A. This meeting didn't take place in the headquarters of the CIO, understand.

Q. Yes.

A. This was a hall upstairs, reserved for this——

Q. But it was in the same building?

A. Yes, sir.

Q. That is, Mr. Carney's offices are downstairs and then there is a meeting hall upstairs?

A. That's right.

Q. And who called you together?

A. Well, it was generally understood that there would be a meeting that afternoon. I don't know who called the meeting.

Q. And when you got to the meeting who addressed the meeting?

A. Well, I couldn't just say. I had——

Q. Well, you got your instructions at that meeting, didn't you?

A. It was understood—the bills were there, printed, calling for this meeting.

Q. Yes. Well, then, when you got there, now you are in the hall and you are seated, who talked to you?

A. Why, Mr. Barry spoke, Mr. Carney——

Q. Yes.

A. —two or three other men, whose names I am not familiar with.

Q. How many in all? What was the number of speakers in all?

A. Oh, probably two or three.

Q. Well, now, you have mentioned—you said Mr. Carney, Mr. Barry and three or four more. Now, there must have been more than two or three.

A. Those were the principal speakers.

Q. How many in all spoke? Can you remember the number, ten or twelve?

A. Oh, no; about three.

Q. Who were they?

A. Mr. Barry and Mr. Carney.

Q. And who is the other one?

A. I couldn't recall his name. I didn't know him.

Q. Mr. McGinn didn't speak?

A. No, sir.

Q. And you didn't speak?

A. No, sir.

Q. How many were present at the meeting?

A. Oh, probably seventy-five or eighty.

Q. And what were the instructions given to you?

A. That we would assemble at this particular hall in Jersey City on Monday, the 29th, for the purpose of attending this meeting to pass out these bills.

Q. And you were to assemble at 76 Montgomery Street on November 29th, you were to leave Newark at 5:30 in the morning?

A. There was no particular time designated to leave Newark.

Q. But you were to go to Jersey City on November 29th, 1937, and go to 76 Montgomery Street?

A. That's right.

Q. For the purpose of distributing circulars?

A. That is right.

Q. Did anybody say anything about an ordinance of Jersey City?

A. Did anybody say anything about an ordinance?

Q. Yes.

A. I was informed, or rather the meeting was informed——

Q. By whom, by whom?

A. I believe——

Q. By Mr. Carney?

A. I think it was Mr. Barry brought it up.

Q. By Mr. Barry?

A. Yes.

Q. What did he inform the meeting?

A. That an application had been made for a permit on several occasions and had been denied.

Q. Yes, and that there was an ordinance in force in Jersey City against the distribution of circulars? Didn't he tell you that?

A. Yes.

Q. And that you were to go over there and distribute them anyhow?

A. That they felt—there was legal advice that the ordinace was unconstitutional.

Q. And he told you that in his judgment the ordinance was unconstitutional and that ordinance or no ordinance you were to distribute the literature, is that right?

A. That is right.

Q. In other words you came over to make a test of this ordinance, didn't you?

A. I suppose it resulted in that.

Q. Well, didn't you?

A. I didn't give it any particular thought.

Q. Well you are a very intelligent man, Mr. Foley, and you knew there was an ordinance, didn't you?

A. I knew there was no such stuff as that in my native state.

Q. I know. But you knew that there was in the state to which you had been transferred, to wit, New Jersey?

A. Well, I thought since I was still within the United States, that I would have the same constitutional rights in the State of New Jersey that I had in West Virginia.

Q. But you didn't—and on account of holding that belief you didn't think that you had to obey the Jersey City ordinance because they didn't have in West Virginia, is that right? Was that your reasoning?

A. Not as long as it was unconstitutional I didn't think so.

Q. And that was the reason why you came over to distribute those pamphlets, because you knew there was an ordinance, that a permit had been denied, but because you thought it was unconstitutional you would distribute them anyhow, is that right?

A. That is right.

Q. And all of them had the same opinion as you had?

A. I don't know, I can only answer for myself.

Q. You don't know what they came for, do you?

A. They came to distribute those handbills.

Q. And then they had the same opinion as you had?

A. They may not have had.

Q. All right. They had the same purpose as you had?

A. Yes, sir.

Q. And when you saw the police as you passed the City Hall—you told us as you passed the City Hall twenty cars were lined up with plain clothes men. Now you saw them there?

A. Yes.

Q. How did you know they were plain clothes men?

A. Because they didn't have uniforms on.

Q. Well, how did you know they were members of the police force?

A. Mr. McGinn told me they were.

Q. And that is the only reason you knew?

A. That is right.

Q. But you did not know yourself whether they were plain clothes men belonging to the police force or not?

A. Well, I could see them coming out of the City Hall and getting in the cars.

Q. Yes, City Hall is a public place, isn't it?

A. Yes, but that was probably ten minutes to six in the morning.

Q. All right. The City Hall is open all night, isn't it?

A. I don't know.

Q. Then all you knew was that they were plain clothes men because Mr. Carney told you so?

A. Mr. McGinn.

Q. Mr. McGinn told you so and that is the only way you know?

A. That is correct.

Q. Now then, you and Mr. Barry got your handbills in the meeting room, didn't you?

A. Yes, sir.

Q. And that is 76 Montgomery Street?

A. Yes, sir.

Q. And then there was this telephone call while you were in the place?

A. Yes, sir.

Q. And a few minutes after that Mr. Macri came in?

A. Probably twenty minutes after that call, fifteen minutes.

Q. So that what you intended to do was to defy the police and distribute those circulars, ordinance or no ordinance?

MR. FRAZER: I object.

MR. HAMILL: This is cross-examination.

THE COURT: I didn't understand that you had asked for a permit to distribute the circulars. Do you know that of your own knowledge?

THE WITNESS: Why only that I was told that several requests had been made for a permit that were denied, to pass these bills.

THE COURT: He does not know that of his own knowledge.

THE WITNESS: No, sir.

Q. And you knew that the permits had been denied? You had been told that, hadn't you?

A. Yes.

Q. And you knew that you had no permit to distribute that literature?

A. Personally?

Q. Oh, personally, yes.

A. No.

Q. Personally, officially or any other way. And you knew you might be arrested for distributing this literature without a permit, didn't you?

A. Yes, sir.

Q. And you came over to dare the police to arrest you?

MR. FRAZER: I object to that.

A. No, I would not say that.

Q. Well then what—you saw the police as you were passing the City Hall?

A. That is right.

Q. You saw the police when you were at 76 Montgomery Street?

A. Yes, sir.

Q. You knew that the police were there to prevent you from distributing the literature, didn't you?

A. Yes, I suppose that is what they were there for.

Q. Well, wasn't it? Weren't you there for that purpose?

A. They stopped the distribution of the handbills, if that is what you mean.

Q. So you were there to distribute the literature, whether the police wanted you or not, weren't you? Why do you hesitate?

A. I don't understand the question.

THE COURT: May I inquire——

Q. You mean dangerous in what way? In what way dangerous?

A. I didn't say dangerous.

THE COURT: He said he didn't understand the question. May I inquire whether there was a test—weren't these other persons convicted in the Recorder's Court? Is that correct?

MR. FRAZER: Yes, sir.

THE COURT: In Judge Botti's court?

MR. FRAZER: Yes, sir, they were convicted and there was a writ of certiorari allowed by the United States Supreme Court to review the conviction.

THE COURT: What is the status of that?

MR. FRAZER: The writ has been allowed, sir, but it has not been argued yet.

MR. HAMILL: As a matter of fact you will find out by consulting Mr. Kopelsohn that the writ has been withdrawn, the men served their sentence and the matter has been closed up.

THE COURT: The only reason I ask that, Mr. Hamill,——

MR. HAMILL: The writ is not awaiting argument at all. The writ has been withdrawn and the proceedings closed.

THE COURT: In the Lovell case, she was convicted in the Recorder's court——

MR. HAMILL: If I am not mistaken—and I want to be corrected if I am——

MR. FRAZER: That is the first I heard of it.

MR. HAMILL: Somebody on your side might inquire by telephone and I will take your statement.

THE COURT: In the Lovell case, as you know, Mr. Hamill, she was convicted in the Recorder's court also for distributing circulars, and she appealed her conviction finally to the Supreme Court. It does not appear whether she was out on bail or not.

MR. HAMILL: What case are you reading from?

THE COURT: Lovell v. The City of Griffin in Georgia.

MR. HAMILL: Yes, sir. She was distributing pamphlets on the public streets.

THE COURT: And she was convicted of it. That is the only reason I mention it and it does not appear though whether she was out on bail or not.

Q. So that you were there to distribute the literature whether the police wanted you to or not?

A. I was there to distribute the literature.

Q. With full knowledge that a permit had been refused and the police were there to prevent the distribution, is that right?

A. Do you want me to say that I would continue to distribute this literature even when the police prevented me from doing it? Is that what you want?

Q. Yes.

A. No, sir.

Q. Then you did not distribute any—well then do I understand you came over to comply with the law?

A. No.

Q. Well then what did—when you passed the police station and saw these twenty cars and saw the plain clothes men and got the information, you knew that the police were there to prevent you from distributing the literature, didn't you?

A. I didn't have a chance to distribute it when it was taken from me.

Q. No. You knew before you got to 76 Montgomery Street that it was not permitted and would not be permitted by the police for you to distribute the literature?

A. I only knew it from hearsay. I didn't have anything official on it.

Q. All right. But you knew it?

A. From hearsay, yes.

Q. You want to say now that you didn't know it?

A. I didn't know it officially.

Q. No. Didn't you know it as a matter of fact? Didn't you know it actually?

THE COURT: You do not even know, Mr. Foley, do you that a permit was asked for? I would like the record, Mr. Frazer, of all the legal proceedings. I would like the records of the request for a permit to distribute this literature if there was such request.

MR. FRAZER: I think there is no such thing.

THE COURT: And the proceedings undertaken by counsel in their review of the conviction.

MR. FRAZER: I would be very glad to get it, your Honor. My understanding is that the applications for permits are verbal applications made to the captain of the precinct. There is no requirement for a permit in the ordinance, no provision for it at all.

THE COURT: May I have the ordinance, Mr. Hamill?

MR. HAMILL: I think I have a copy of it here.

Q. You made no application for a permit?

A. No, sir.

Q. Macri made no application——

THE COURT: I think it is a little unfair to this witness to assume that he was consciously violating the ordinance unless he knew.

MR. HAMILL: He is presumed to know the law under the general proposition that we all have to labor under, which is not always actually so.

THE COURT: Practically never so.

MR. FRAZER: The law in the Englewood case is similar—not Englewood, Edgewater.

THE COURT: You have the ordinance?

(Papers handed to the court.)

THE COURT: I do not see anything about the permit in it at all.

MR. HAMILL: No, it simply says: "no person shall distribute or cause to be distributed or strewn about any street or public place, any newspaper, paper, periodical, book, magazine, circular or pamphlet."

THE COURT: Then how would you go about getting a permit, Mr. Hamill?

MR. HAMILL: Why you would not go about getting a permit. The act is prohibited by the ordinance.

THE COURT: Then the witness can scarcely be criticized for not having a permit, can he?

MR. HAMILL: If your Honor please, may I ask the witness a question?

THE COURT: Yes.

Q. You told us that permits were refused. Who made applications for permits?

A. I don't know.

Q. Well, how do you know then that permits were refused?

A. I heard Mr. Barry say at the meeting that they had been refused.

Q. And that is the only reason you know?

A. That is right.

MR. HAMILL: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. On the question of those plain clothes men, did you see them afterwards in the company of uniformed officers?

A. Yes. They both acted in conjunction with each other.

Q. And was it a plain clothes man or uniform man that took the things from you, the pamphlets?

A. The plain clothes man.

Q. On both occasions?

A. Yes.

Q. There were two occasions, weren't there?

A. Yes.

Q. Two different occasions?

A. Yes, at the Harborside Building and the other at 76 Montgomery Street.

Q. What did he do with the pamphlets when he took them away?

A. The first time?

Q. The first time.

A. They were torn in two.

Q. What did he do the second time?

A. I think they were just crumpled up.

MR. FRAZER: That is all.

RE-CROSS-EXAMINATION.

By MR. HAMILL:

Q. Are you still with the CIO?

A. Yes, sir.

Q. In the same capacity?

A. I am called here as a witness.

Q. No. Your official capacity with the CIO. Are you in the same capacity or position in which you were when you first came to New Jersey on November 19, 1937?

A. No, sir.

Q. What are you now?

A. My services as field representative were terminated on the 10th of last December.

Q. Well, what position do you hold now?

A. Now?

Q. Yes.

A. Unemployed.

Q. So that you have not been employed by the CIO since December 10, 1937?

A. That is right.

Q. Is that right?

A. That is right.

Q. And you are not connected with them now, is that so?

A. I am furloughed, subject to recall at any time.

Q. Under salary?

A. No, sir.

Q. Who furloughed you?

A. Instructions from Washington.

Q. Were they written instructions?

A. Yes, sir.

Q. To whom were the instructions addressed?

A. To me.

Q. To you?

A. Yes.

Q. By mail?

A. Yes, sir.

Q. By letter?

A. Yes, sir.

Q. And have you that letter with you?

A. Not on my person, no.

Q. I mean you will have it by tomorrow?

A. It is at my home in West Virginia, Fairmont.

Q. These instructions were sent to you in December 1937, and where were you?

A. Fairmont, West Virginia.

Q. But how long then were you employed in New Jersey?

A. I came here the 22d of November and left here the 8th of December.

Q. Were you sent up here for the purpose of leading this movement——

A. No, sir.

Q. —to distribute circulars, police or no police?

A. No, sir. That was never mentioned.

Q. You came up on November 22d and you left on December 8th?

A. December 8th, yes, sir.

Q. And it was on November 29th that you came to Jersey City?

A. That is right.

Q. What activities did you engage in when you came here beside the movement to distribute circulars in Jersey City?

A. Organizing the unorganized.

Q. What organizing did you do?

A. Well I had only been here about three or four days.

Q. Yes.

A. And I merely accompanied other men to the meetings, men that were familiar with the situation.

Q. You were here sixteen days altogether?

A. That is right.

Q. Now, how many days did your activities in distributing pamphlets take you?

A. How many days?

Q. Yes.

A. There was only one I recall, that was in Jersey City.

Q. All right. What preparations were made for it? You had a meeting the day before, didn't you?

A. No, I think it was Wednesday of the week before that.

Q. You came here on the 22d, didn't you, of November?

A. Yes, sir.

Q. Then what did you do on the 23d of November?

A. The 23d? I think I attended a meeting of the Newark Industrial Union Council that evening.

Q. And what did you do on the 24th?

A. I just cannot recall.

Q. What did you do on the 25th?

A. I think we had a meeting, in regard to this meeting in Jersey City.

Q. On the 25th you had a meeting in Jersey City and that is the meeting that was addressed by Mr. McGinn and Mr. Macri?

THE COURT: I want to be very prompt about adjourning. I am going to adjourn now and meet again at two. After today—I have another matter on today at four o'clock—I will sit until five o'clock if that is agreeable to counsel.

MR. HAMILL: That is all right.

MR. FRAZER: Yes.

THE COURT: And before we adjourn I want to say to the persons in the court room that those who were here this morning will have to wait and give to those, apparently, who want to come in, a prior right this afternoon. The same benches will be reserved for the witnesses which were reserved before.

(Recess until 2 P. M.)

AFTERNOON SESSION.

MR. FRAZER: Mr. Foley. Mr. Foley, I believe, is still under cross-examination.

THE COURT: Mr. Foley, yes.

DANIEL J. FOLEY, resumed the stand.

THE COURT: Go ahead, Mr. Hamill.

MR. HAMILL: Yes, your Honor.

CROSS-EXAMINATION (Continued).

By MR. HAMILL:

Q. I think, Mr. Foley, you told us that you were placed in a car and then taken out again, is that right?

A. Yes, sir.

Q. And do you know what kind of a car it was?

A. Yes, it was a coach.

Q. I beg pardon?

A. A coach.

Q. Wasn't it an automobile?

A. Yes, sir. I thought you meant what type.

Q. You mean a sedan?

A. Yes.

Q. And then you showed someone a sheriff's courtesy card, is that right?

A. No, not there.

Q. Where was it you showed the courtesy card?

A. At the precinct.

Q. And a courtesy card from what sheriff?

A. Sheriff Andrew West of Marion County, Fairmount, West Virginia.

Q. And they treated you very nicely after that, is that right?

A. That's right.

Q. Some captain then told you that men were being distributed all over the City of Jersey City?

A. No, sir, I did not say that.

Q. What did you say?

A. I said they were of the opinion that men that were taken from the hall—were of the opinion that they were being distributed all over the city and it was my object to find just where these men were located.

Q. Did you find them in court afterward?

A. Yes, sir.

Q. When was it that you made that inquiry and received that answer? What time of the day?

A. Oh, possibly eight fifteen.

Q. And at nine thirty the court was opened, was it?

A. As near as I can recollect.

Q. Now, Mr. Foley, weren't you sent to New Jersey from West Virginia by the National Authority of the CIO for the express purpose of leading a band into Jersey City to defy the police and test the validity of that ordinance?

A. No, sir.

THE COURT: I have read the ordinance again, Mr. Hamill, during the recess, and I have compared it with the Georgia ordinance, in what I take to be the usual form, it says: "Without first obtaining written permission from the city manager." The Jersey City ordinance has no provision for obtaining permission from anybody. And furthermore, without wishing to interpret it, it seems to me you have relation to littering the street and has nothing to do with the distribution of literature from hand to hand. It says, "No person shall distribute or cause to be distributed or strewn about any street;" I would have said it didn't apply at all to the distribution of handbills unless they were strewn about the street.

MR. HAMILL: If your Honor please, that is the point. If your Honor will read the Griffin ordinance—I

am quoting from memory, your Honor, you will find that it is the widest kind of an ordinance that could be drawn. It says: "Nobody can distribute within the limits of the town of Griffin——"

THE COURT: Yes, without first obtaining written permission.

MR. HAMILL: Under the Griffin ordinance if one man handed another a paper in a court room or in a home or any place else in the town of Griffin without permission he would be violating that Griffin ordinance. Of course the Griffin ordinance is so widely drawn as to defeat its own purpose.

Now, I am not saying that ours does not come in within the scope of the Supreme Court decision but ours is a far better ordinance because there are restrictions and reasons in it.

THE COURT: No, I am not in the slightest criticizing your ordinance except in this respect, that you are criticizing this witness for not obtaining permission. I don't know how he could obtain permission, under that ordinance. I don't think, in the first place, it applied to what he wanted to do.

MR. HAMILL: Well, we say that you can't distribute and litter the streets. The Griffin ordinance said you must have a license. There is no provision for a license in our ordinance.

THE COURT: Well, this witness' testimony was that he had no purpose of littering the streets.

MR. HAMILL: I didn't bring that out. That was brought out on direct, and I just followed it up on cross.

THE COURT: I say you have criticized this witness for not obtaining a permit. A permit to do what?

MR. HAMILL: May I say to the Court, I am not doing it, but the other side insisted on bringing out the

fact that he got no permit, and of course I cross-examined on their direct. I think that's all, Mr. Foley.

MR. FRAZER: That's all, Mr. Foley.

THE COURT: Wait a minute, Mr. Foley. I don't know whether counsel for both sides--give heed to this, and if you don't want me to ask the questions, I won't do so.

MR. HAMILL: I can't hear your Honor.

THE COURT: If you don't want me to ask these questions I won't ask them, but I gathered from the pleadings, both the bill and the answer, that there might be some issue with respect to what political party these plaintiffs belonged and possibly with reference to what religious beliefs they held.

MR. HAMILL: If any.

THE COURT: If any. Shall I inquire from them?

MR. HAMILL: I have no objection.

MR. FRAZER: I have no objection.

THE COURT: Each one?

MR. FRAZER: I have no objection, sir.

MR. HAMILL: No objection.

THE COURT: All right. I will inquire. Perhaps it would be better for me to inquire because it is a delicate matter to inquire into a man's political and religious beliefs.

By THE COURT:

Q. Mr. Foley, I took it from what you said that you were born in this country; is that correct?

A. That's correct.

Q. What is your religion?

A. Irish Catholic.

Q. What political parties are you—I think the word is affiliated with, if any? Can you tell us?

A. I cast my first vote in 1916 for Woodrow Wilson. It has always been a straight Democratic vote.

THE COURT: Any questions?

MR. HAMILL: None.

MR. FRAZER: That's all, Mr. Foley.

THE COURT: I am going to ask those questions if counsel have no objection to each witness called for either side—unless there is objection.

Is that all then from this witness?

MR. FRAZER: That's all.

MR. HAMILL: That's all, if your Honor please.

MR. FRAZER: Mr. Clendennin.

DAVID L. CLENDENNIN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Clendennin, what is your occupation?

A. I am the national treasurer of the Workers Defense League.

MR. HAMILL: The national what? Will you speak a little louder, please? It is hard to hear over here.

THE WITNESS: Certainly, Congressman. I am national treasurer of the Workers Defense League.

Q. How did you have occasion to be in Jersey City on November 29, 1937?

A. That was one of the occasions on which I had business in Jersey City.

THE COURT: Just a minute, Mr. Frazer. I am going to follow the same procedure with this witness.

MR. HAMILL: Will you ask him his address, your Honor?

THE WITNESS: It is in the record.

THE COURT: I suppose you still reside at Ardsley-on-the-Hudson, Westchester County?

THE WITNESS: I do.

THE COURT: He has been a witness, you will remember, before, Mr. Hamill.

MR. HAMILL: I remember, yes.

By THE COURT:

Q. Now I want to ask you, what is the Workers Defense League? You see, we don't know about those things, Mr. Clendennin.

A. Well, the Workers Defense League, may it please the Court, was organized about two years ago when it became apparent that workers who were gradually seeing the need for union organization were being subjected to mistreatment, terrorism and other forms of official brutality on the part of local organizations.

Q. What is it, incorporated or unincorporated?

A. It is unincorporated. Do you mean does it have a charter in any state?

Q. Yes.

A. No, no, it has no charter in any state. Its national offices are located in New York City.

It became quite apparent in the course of the experience of labor organizers and others with whom I have had connection——

MR. HAMILL: Now, if your Honor please, I object.

THE COURT: Yes, I didn't ask you that.

THE WITNESS: I thought you asked the purposes of the Workers Defense League.

THE COURT: No, I asked you what it was, not what its purposes were.

THE WITNESS: Well, it is an organization which is designed to protect the rights of workers, Mr. Hamill.

MR. HAMILL: Now, may I inquire——

THE COURT: Well, I think you should wait.

MR. HAMILL: Well, never mind.

THE COURT: Go ahead, Mr. Frazer.

By MR. FRAZER:

Q. Now, you say you did have occasion to come to Jersey City the day of November 29, 1937?

A. Yes, that was one of the occasions.

THE COURT: I think we ought to have something else about him. You are a graduate of Yale?

MR. FRAZER: I think the Court knows him better than I.

MR. HAMILL: Mr. Clendennin was in the cavalry in the World War.

Q. Where did you come from on this day?

A. On this particular date I came from Pittsburgh, where I spent the week end.

Q. Did you come in company with anyone?

A. Yes, sir; I was in company with Mr. Gilmartin, who is on the National Executive Committee of the Workmen's Defense League and our publicity director at the time.

Q. Who else?

A. Sidney Hertzberg.

Q. How did you come to Jersey City?

A. Of course the Workers Defense League, as I explained a moment ago, is organized to protect the rights of workers. It has been my personal experience that the rights of workers were constantly being interfered with in Jersey City.

THE COURT: You may not do anything but testify to facts, please.

THE WITNESS: I was trying to explain why I was in Jersey City on that date. Since it is part of the function of the Workers Defense League to protect the rights of workers and it was obvious from newspaper reports——

MR. HAMILL: I object to him testifying to anything from newspaper reports.

THE COURT: Yes. You must not do that.

Q. You came to Jersey City, in any event, no matter how you came to be there?

A. I came to see whether the police conducted themselves according to law or not.

Q. Well—how did you come from Pittsburgh?

A. By train.

Q. Where did you get off?

A. I got off at Newark.

Q. At what time?

A. It was about six o'clock in the morning.

Q. How did you go from there to Jersey City?

A. Well, after getting off the train, as I recall it, we washed up in the station at Newark and came in by tube. We got off the tube at Grove and Henderson——

Q. Did you have any luggage with you?

A. Yes, we had our overnight suitcases.

Q. Did the other men have anything besides suitcases with them, do you remember?

A. I believe Mr. Hertzberg had a portable typewriter with him or something of the sort and Mr. Gilmartin may have had a brief case. I, myself, just had my suitcase.

It was our intention to leave these luggage, to check them, if there were a locker available——

MR. HAMILL: I object to what his intention was. We want to know what the facts were as they came under his senses.

THE COURT: Yes, confine yourself to the facts.

A. Well, we looked for a locker because we wanted to leave our luggage, but seeing none——

MR. HAMILL: I object to his giving his reason why he wanted to leave his luggage.

THE WITNESS: It is part of the picture.

Q. You did not leave your luggage?

A. No, we were forced to take it with us and we proceeded down Montgomery Street. It was gradually getting dawn about this time and everything seemed to be quiet—and in fact everything was quiet except at every block there were policemen stationed.

We arrived—walking down Montgomery Street we arrived at 76 Montgomery Street, where the CIO organizers were to meet us. When we got there there seemed to be no one about but when we finally got there we saw there were two men standing in the doorway. One of these was identified as John Holley, organizer for the textile workers, and Mr. Edward Levinson. We greeted them casually and started when suddenly Mr. Levinson said, "Get inside quick, here come the policemen." Naturally, as a result of this we went inside as fast as we could, through these revolving doors. I was the last one in, having some difficulty with the suitcase and the other two were ahead of me going up the stairs.

I got about half way up the stairs when I was pulled from behind, virtually pulled down this stairway. When I came down to the bottom I saw I was in the grip of a plain clothes man and I inquired of him whether he was a city detective or a private detective, meaning by that a private company detective. With a grin he said, "Both." I then determined that I would demand his arrest of whoever was in charge.

MR. HAMILL: Never mind what you determined. Not what he determined, what he did.

A. Well, that determined my action, Mr. Hamill.

MR. HAMILL: I know it determined your action, but in court you may only testify to facts. You cannot give us the operations of your mind.

MR. FRAZER: May I ask that Mr. Hamill do not argue with my witness. If he has any objection he can address it to the Court.

MR. HAMILL: Well, he is a very intelligent witness and he gets the point of the suggestion, and that is the only reason I did it.

THE COURT: Go ahead.

A. We then proceeded through the revolving door where I demanded to know who was in charge. Another man in plain clothes, an overcoat and hat, came up and said he was. I demanded to know who he was and insisted at the time that he put this man who had taken me unlawfully into custody, put him under arrest. This person who said he was in charge then said he was a deputy chief and I demanded to know by whom he had been deputized. He simply didn't answer that but pulled out a badge which said on it "deputy chief" and said, "I am Charles Wilson."

MR. HAMILL: Charles Wilson?

THE WITNESS: Deputy Chief Wilson.

At this point these men who were all gathered around during the repartee between myself and Chief Wilson, had taken my suitcase, thrown it down on the sidewalk, had opened it and were going through it.

I insisted that this came under the Constitution of the United States as an unwarranted search and seizure. They simply laughed and said there was nothing in it of any particular import. There was simply clothes, a shirt or two, toilet articles and some pamphlets which the Workers of Tampa published, dealing with the unlawful acts of police of Tampa, Florida.

The deputy chief said, "O. K. boys, let him go and we gathered up our belongings, including the suitcase, and proceeded upstairs to the meeting hall of the Boot and Shoe Workers Union.

Q. Mr. Clendennin, do I understand that the treatment which you have described as having been meted out to you was also meted out to Mr. Gilmartin and Mr. Levinson?

A. Their belongings were also searched.

MR. HAMILL: May I object at this time for the purpose of saying this: does he know what happened to those two men? Did he see it? If it will shorten up the testimony I have no objection to an answer to that question.

MR. FRAZER: The three of them were together, as I understand it, Mr. Hamill.

MR. HAMILL: If they were, all right. Were the three of you together?

THE WITNESS: We were right together. I was naturally more interested in what was going on in my own suitcase than what was going on in the others.

Q. All right then. You were permitted to go in again?

A. That is right.

Q. And what happened then?

A. Well, we went upstairs to the meeting hall and already the meeting was in progress. My purpose——

Q. Never mind what your purpose was. Say what you did.

A. I might say that I was not distributing leaflets that day.

MR. HAMILL: I object. That is expressing his purpose in another way.

THE WITNESS: Well, I did not go into the meeting. I simply heard the discussion through the doorway and I stood there with Mrs. Parker—rather Miss Cox, now

Mrs. Parker, Mr. Parker and one or two other people who were there.

We, of course, saw the pile of leaflets on the table. They were there to be given out. At least, I—well, they were there. We took them up and examined them but left them—I did, at any rate. There was considerable confusion in the hall. There were forty-five, fifty people, and eventually, why, about a quarter to eight, a quarter to seven, the organizers, the distributors, came out of the hall and went out the door.

Q. Now, Mr. Clendennin, did you see the leaflets at that time?

A. I did.

Q. I show you Exhibit P-1 and ask you whether that is it, whether you can identify it as one which you saw.

A. It was a leaflet advertising a meeting to be held the following Friday.

Q. (Exhibit P-1 handed to the witness.)

A. Oh, yes, this is it. I examined it carefully at the time. I was interested, naturally, in the wording of it.

MR. HAMILL: Let me look at it again, Mr. Frazer. It is a choice piece of record and lierature and invective.

(Exhibit P-1 handed to Mr. Hamill.)

Q. Now, at a quarter to seven you say they started to go out, is that it?

A. They started out.

Q. Then what did you do?

A. The observers remained off to one side while the distributors went out through the door and down the hall. When they had all left then we trailed along afterwards, since we were to see what happened. When we came out of 76 Montgomery Street the distributors had headed east on Montgomery Street toward the Harborside Building. They

were on the north side of Montgomery Street. I crossed over in the company of Miss Cox, Mr. Parker, one or two other observers, to the south side of Montgomery Street, and went along, also in an eastward direction. When the distributors arrived exactly opposite to the tube entrance they were met by a gang of plain clothes men and uniformed police. There were one or two cars in the way but it was very clear to me as an observer just across the street next to the bank building there that the plain clothes men were attempting a flying wedge tactic.

MR. HAMILL: Now, did you see them do this, Mr. Clendennin?

THE WITNESS: I did.

MR. HAMILL: All right. Go ahead.

A. (Continuing.) Towards the ferry building. They proceeded for I should say about twenty feet or so and then there was a sharp cry, more of a command, I can't say what it was—it was a bark—and they stopped. There was great confusion, some shouts, somebody had been arrested, and I crossed over then to the north side of Exchange Place the better to observe exactly what was going on, if any assaults were taking place. I saw no one assaulted at that time but did observe a leaflet lying on the ground, and since littering of the streets is, in my opinion, an uncleanly act——

MR. HAMILL: Oh, now, I object.

A. (Continuing.) Well, I picked up the leaflet.

MR. HAMILL: I object to what his opinion is.

A. (Continuing.) I picked up the leaflet. At this point a plain clothes man, a young man with a scar on his right cheek, I think I could identify him, came over and grabbed me by the arm. I pushed or shoved the leaflet into my pocket. He reached in my pocket and took it out. At this point Mr. Parker came over and this plain clothes man gave him a very sharp blow in the pit of the stomach, which

caused him to double up in pain. I asked the plain clothes man if I were under arrest. He said, "Sure." I said, "All right," and he started up the street with me in a westward direction. As we went along he said nothing but I told him that his actions were simply playing into the hands of the CIO.

MR. HAMILL: I object to what he told the policeman.

MR. FRAZER: It is part of the whole res gestæ.

MR. HAMILL: I object.

MR. FRAZER: This is a conversation with a policeman of Jersey City.

MR. HAMILL: I know, but not what he told the policeman; that doesn't make any difference. What the policeman said to him may be evidence, but when he said it it is a self-serving declaration. The other would be a declaration against interest.

THE COURT: Sustained. Apparently it was some advice that was given.

MR. HAMILL: Pardon me?

THE COURT: Sustained.

A. (Continuing.) I was advising him that he was acting contrary to the interests of Jersey City.

MR. HAMILL: I object. I object to what he was advising him.

THE COURT: Just say what he said to you, if anything.

A. (Continuing.) Finally we got out of this tube station and he said nothing but simply let me go. He went back then towards the group. I went right after him. At this point my attention was directed by other people looking in the same direction towards the bank building on the

south side of Exchange Place, and there I noticed Mr. Macri and Mr. Gilmartin among others, whom I didn't know at the time but I did know these two definitely, were there, in the custody of an officer. As I came back to the main entrance, the distributors, those who had not been arrested, went back in a westward direction along Montgomery Street. After looking over the situation, seeing that there were no more leaflets being distributed, I also went back after them. At 76 Montgomery Street we went inside and upstairs again to the Boot and Shoe Workers Union meeting place. There a meeting took place, a check-up of those not arrested. Following this the distributors went down out of the Union meeting hall down the stairs into the lobby, but in the lobby the revolving door was blocked.

MR. HAMILL: Do we understand you were with them at the time?

THE WITNESS: I was coming after them; as an observer I was in the rear guard.

MR. HAMILL: Did you see these things?

THE WITNESS: I saw these things; when I came down the stairs, the CIO people were all massed in the lobby. This is what I saw, Congressman. They were unable to get out, and on the outside I saw through the glass pane of the revolving door Deputy Chief Wilson giving—speaking, I don't know what he was speaking; he was in the act of speaking; I could see his mouth moving; to the plain clothes men who were grouped around him. The CIO people next, nearest to the door, continued to make attempts to push it so they could get it. But the door was blocked. This took place five or ten minutes, and then the door was released and one man was let out. As he came out a line was formed, a gauntlet, as the expression is——

MR. HAMILL: A what?

THE WITNESS: A gauntlet. You know the expression, running the gauntlet.

MR. HAMILL: Oh, a gauntlet.

THE WITNESS: That's right.

A. (Continuing.) —was formed of plain clothes men, and as these men came out one by one they were forced down this gauntlet to a car which was parked at the curbstone, not a police car, a civilian car. As they were put in the cars two or three, as many as the car could accommodate, together with the plain clothes men, the car would drive off. I could see this very distinctly. And then another car would drive up, more men, two or three, let out, put in the cars and driven off. I was rather concerned as an official observer——

MR. HAMILL: Well, never mind how you were concerned. Just tell us what you saw.

A. Well, I meant to say I was concerned in the sense that——

MR. HAMILL: Well, don't tell us whether you were concerned or not.

A. (Continuing.) I wanted to be on the outside.

MR. HAMILL: No.

A. (Continuing.) So I left my pamphlets——

MR. HAMILL: I object to what he wanted to be. Were you on the outside?

THE WITNESS: I was on the inside.

MR. HAMILL: Yes.

THE WITNESS: During this proceeding, observing this through the glass door.

MR. FRAZER: I think Mr. Hamill is getting a little bit beyond himself, causing a little obstruction to my witness.

MR. HAMILL: All right.

Q. What did you do?

MR. HAMILL: Then I will make my objections. The point is well taken. I will make my objections then to the Court. I thought we would save time.

THE COURT: Tell us what you did.

THE WITNESS: Yes.

A. (Continuing.) Well, I left my leaflets. I had one or two leaflets in my hand, undecided whether to distribute them or not. At any rate, I left them inside on a radiator in the lobby, to facilitate my going out. As I went out I was forced to stop just outside the revolving doors and was searched. Finding no leaflets I was let through.

Q. What did the search consist of?

A. I believe the policeman here would call it frisking. That is, you put up your hands and they go through your pockets.

MR. HAMILL: I object to that, what the policemen would call it. What did the search consist of, is the question.

THE COURT: Yes, yes. Please answer it.

A. Well, I held up my hands and they went through my pockets.

Q. Then what happened?

A. I had no leaflets. As I explained, I left them inside, previously. So I was simply shoved aside through the gauntlet to the west. There I immediately stopped to observe what was happening. I saw then Mr. Gilmartin and Mr. Hertzberg come out through the gauntlet. They were also searched, their leaflets taken away, and they were put into a car.

Q. Now, what did the search of Mr. Gilmartin and Mr. Hertzberg consist of?

A. The same process. They were put into a car, a civilian car, and I took down the number of that car. I made a note of it and it is in my affidavit. They were driven off.

Q. Do you remember what the number was?

A. I beg your pardon?

Q. Do you remember the number?

A. I don't recall the number at the moment. It was a Hudson County—an *H* number.

Q. Well, if I showed you this affidavit which you have signed would it refresh your memory?

A. I made a note of it at the time and made my affidavit immediately following the circumstances.

MR. HAMILL: Let me see the paper before you give it to the witness, Mr. Frazer, if you please.

MR. FRAZER: It is his affidavit.

MR. HAMILL: Well, may I look at it?

MR. FRAZER: No, I don't think so.

MR. HAMILL: I have the right to look at it to know whether he can use the document to refresh his memory.

MR. FRAZER: You have no right to look at my notes, my witness' testimony.

MR. HAMILL: I have a right, if the witness is going to use notes——

THE COURT: Is that an affidavit?

MR. FRAZER: This is an affidavit. I asked him whether his memory would be refreshed by referring to the affidavit, as to this number.

MR. HAMILL: That is not the legal rule. The legal rule is first of all, has he an independent recollection outside of the document.

THE COURT: He said he had not, previously.

MR. HAMILL: Then I have a right to see what it is, what is in the document that he is going to testify to.

THE COURT: Yes, I think so. I think he has the right.

MR. FRAZER: To examine the document?

THE COURT: Yes.

THE WITNESS: Just as to this number.

MR. FRAZER: Not as to the whole subject matter of the document.

THE COURT: No, no.

MR. HAMILL: But the subject matter on which you are going to examine him, Mr. Frazer.

MR. FRAZER: Very well. That's this number, sir. H-14365.

MR. HAMILL: Well, if that is all you are going to put in, why don't you state it?

MR. FRAZER: I will be very happy to. I thought you would object.

MR. HAMILL: All right. There are some things I will let go by.

MR. FRAZER: The number is H-14365 on your affidavit.

Q. Is that your recollection as just refreshed?

A. To the best of my recollection that is the proper number. After they had been put in this car, they too were driven off. And immediately after them an organizer——

Q. Might I ask who was in the car with them, if you noticed?

A. Some policemen, plain clothes men.

Q. And how many, do you know?

A. Three. Immediately after them, another group of organizers came through this gauntlet. By group I mean two or three.

Q. Now, might I ask, interrupting you a moment, was this Mr. Gilmartin and Mr. Hertzberg?

A. Mr. Gilmartin and Mr. Hertzberg.

MR. FRAZER: I think I called the wrong number.

MR. HAMILL: I beg your pardon? All right, tell us what you want to prove.

MR. FRAZER: The number was on Mr. Gilmartin and Mr. Hertzberg H-17129. There were two numbers.

Q. Do you remember that, in your affidavit?

A. Yes, I took down every number of every car that I could identify. This, of course, was six months ago and I don't keep the numbers in my mind.

Q. Well, now, did you see a car in which a Mr. Harold Diamond——

A. I was about to describe that name. Mr. Diamond came out. Mr. Diamond was personally known to me, a personal friend, an organizer at that time with the Aluminum Workers of America, affiliated with the CIO. He too was forced into a car and driven off.

MR. FRAZER: Mr. Hamill, will you admit that that car number was H-14365, which I erroneously read for the other one?

MR. HAMILL: I will admit that the witness would testify to that.

MR. FRAZER: All right.

MR. HAMILL: Now, whether his recollection or his observation was incorrect, of course, I have a right to go into that.

MR. FRAZER: I don't mean to bind you.

MR. HAMILL: I mean I am not questioning his veracity. I am only questioning his opportunities for observation and his correctness in recording them.

Q. All right, Mr. Clendennin.

A. Following this procedure, when all these people, when finally the lobby had been cleared of the organizers and they had been taken off, I debated then with the other observers, Miss Cox, Mr. Parker and others—Mr. Foley, I believe, was also with us at that time; in fact, I am sure of it—as to what we should do. We then proceeded along Montgomery Street toward the police station to check on the arrests. When we got up to the police station, with which I was well acquainted, we were denied admittance. I looked around for these license numbers and I saw there the license number H-17129. That is the car with this plate on it; and I knew by that that Mr. Gilmartin and Mr. Hertzberg——

MR. HAMILL: No, I object to what he knew by that.

THE WITNESS: All right.

Q. That was the car in which Mr. Gilmartin and Mr. Hertzberg had been driven?

A. That was the car in which they had been driven.

While we were standing there the door opened and Mr. Hertzberg and Mr. Gilmartin came out in the custody of a man in plain clothes. They were taken over to the car, this same car, same license number, and I went up to the man who had Mr. Gilmartin in custody—that is, by the arm—and I said, "Is this man under arrest?"

The man in plain clothes said: "No, he is not." I said: "By what right, by what authority"——

MR. HAMILL: I object to what he said.

MR. FRAZER: Oh, I think this is part of the whole scene.

THE WITNESS: Oh, it is extremely important.

MR. FRAZER: It is an essential part of the whole scene.

MR. HAMILL: I know, but the scene has to be proved, painted legally.

THE COURT: Say what the man said, not what you said.

MR. FRAZER: Exception, sir.

THE COURT: All right.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. Well, he refused to answer and he didn't say anything. He shoved Mr. Gilmartin and Mr. Hertzberg into this car and they drove off. I made particular note at the time, Congressman, that this car was not driven by any police officer but by a young man not even in plain clothes; he had simply a sweater on.

We then went back up the steps to the police station, seeking admittance. The police officer there, whose number I remember very well because it was an odd one, No. 1111, said, "You can't come in."

A little later, I won't say what I said to him, a little later he came to the door and he said, "Newspaper men can come in."

A Mr. Robert Ball, representative of the People's Press, was with us, and he started in. I too started in. The patrolman asked for my press card. I had none. He said, "Stay out." So I stayed out.

MR. HAMILL: That's what I would do.

A. (Continuing.) Shortly afterwards, a mere matter of five or ten minutes, Police Chief Walsh came to the door and with the utmost graciousness said, "Won't you all come in?"

I took advantage of his invitation. I had met the Chief several times before. And we went in and up to the court room.

Q. Now, before you went in did you see a Mr. Neil Brant there at all?

A. Mr. Brant was in a car whose number I also took down because I recognized it as an official Jersey City police car.

Q. That was MG-1679?

A. That had on it that license number.

When we went up to the court room the court room was empty; it must have been about eight-thirty. There was no one there. We talked, wondered what had happened to our people——

MR. HAMILL: I object to that, what you wondered about. Tell us what happened, please.

A. Eventually, Judge Botti came in; the trial procedure, so-called, started.

The prisoners are brought in. To the best of my recollection the first batch of five were charged with distributing leaflets contrary to a city ordinance. Following their arraignment, conviction and sentence to five days, seven others were brought in.

MR. HAMILL: I object. Just a minute—I object to him testifying to their conviction or their sentence because that is a matter which must be proven by the best evidence and the best evidence is the record of the court.

THE COURT: Mr. Frazer said he would have it.

MR. FRAZER: We expect to have it here before the afternoon is out, sir.

THE WITNESS: Following that I remained in the court room while seven other defendants were brought in and charged with unlawful assembly——

MR. HAMILL: I object to what they were charged with. All of this is a matter of record. They were brought in or came in.

THE COURT: We will have the record here.

MR. FRAZER: This portion, I might say, is not in our stenographic transcript as to the arraignment and holding for the Grand Jury. That, I take it, is not a court proceeding, a proceeding before the committee magistrate. It was not taken down by anyone that we know of. I do not wish to make any misrepresentation as to the extent of my transcript.

MR. HAMILL: There is an official court record, though.

THE COURT: There must be minutes, I assume.

THE WITNESS: Judge Botti officially denied a motion to have a stenographic report made of it, may it please the court.

MR. HAMILL: May I at this time make an objection that I would have made at the end of this witness' testimony, and that is, that he is not a party to this cause and I want to know for what purpose this testimony is given?

MR. FRAZER: Merely to offer evidence of the——

MR. HAMILL: Of the conspiracy.

MR. FRAZER: Yes.

MR. HAMILL: And the denial of civil rights in Jersey City. That is what he is here on the stand for.

MR. FRAZER: In pursuance of a concerted plan and conspiracy.

MR. HAMILL: Oh yes.

MR. FRAZER: I mean that is the purpose of the witness.

MR. HAMILL: Then I object to going on unless we know—the bill charges that there was a concerted plan and conspiracy. If he is put on for that purpose we shall not move to strike out his testimony.

THE COURT: That paragraph uses a word which I criticize, and I repeat my criticism.

MR. HAMILL: Charging conspiracy?

MR. FRAZER: It charges plenty of other things and it is perfectly obvious that I cannot prove all the paragraphs in my bill at one moment.

MR. HAMILL: In the ninth paragraph: The plaintiffs charge that the policy of the defendant is in pursuance of an unlawful plan and conspiracy to forbid all CIO meetings; that the defendants have intimidated owners of halls to prevent them from letting the same to the plaintiffs, the plaintiffs intend to hold peaceful and lawful meetings to discuss CIO organization.

Now if it is for the purpose of proving a conspiracy we do not wish to be considered as making a motion to strike it out.

MR. FRAZER: Mr. Hamill read to your Honor this morning a synopsis of some twenty other paragraphs in the bill which charge many other things besides this conspiracy.

MR. HAMILL: I did.

MR. FRAZER: As I said before, it is perfectly obvious that I cannot prove the whole bill in one sentence.

MR. HAMILL: No. Very well. But then may I ask, if it is not out of order—may I ask the court to ask counsel to what paragraph is he directing the testimony of this witness? Otherwise there is no materiality to this testimony.

THE COURT: I would assume the testimony had reference to the same facts that Mr. Foley testified to.

MR. HAMILL: That is in pursuance of a plan and conspiracy——

THE COURT: Illegal distribution of handbills. That is what I assume. I say again I cannot see any purpose for the use of the word "conspiracy."

MR. FRAZER: It is a plan, unquestionably, and we have evidence of that. If Mr. Hamill wants me to direct his attention to one paragraph which covers these allegations read paragraph thirteen of the bill.

MR. HAMILL: Yes, I will say this. Paragraph thirteen goes on to say the different things that were done, but all these things were in pursuance of a plan and conspiracy set out in paragraph nine.

Q. Now, Mr. Clendennin, I understand you to say that they were arrested. The others were charged with what?

A. The second group with unlawful assembly.

MR. HAMILL: What is that?

A. (Repeated by stenographer.) The second group with unlawful assembly.

Q. And what happened to that?

MR. HAMILL: I object to that. That is a matter of record.

THE COURT: The minutes of the court will show that.

MR. FRAZER: Exception

(Which exception was hereby allowed and sealed accordingly.)

(Seal)

Q. What did you do after that?

A. Well, as I was sitting in the court room—I am glad Mr. Hamill reminded me of it—through a vignette, a half-moon shaped window above the doorway coming into the

court room, I observed Commissioner Casey, whom I also knew very well by sight, Police Chief Walsh, and other people in plain clothes, watching the proceedings in the court. I smiled up at Commissioner Casey but he did not return the salutation. During the course of the trial I looked up every so often to see if they were still there and they continued to stay and observe the proceedings in the court in this clandestine manner until the final conclusion.

Q. What did you do after that?

A. After that I went outside. I met Mrs. Milgrim—her husband, Morris Milgrim, was one of the defendants in the unlawful assembly case. She asked me what had happened to him. I said I didn't know——

MR. HAMILL: I object.

A. —but would try to find out——

MR. HAMILL: I object——

A. —I went downstairs and inquired myself and was informed they were on the top floor—

MR. HAMILL: I object——

A. —in the prison——

MR. HAMILL: I object unless he tells us where he inquired and who informed him. He cannot tell us he went downstairs and saw some people on the street and got some information.

A. Oh, I didn't make myself clear, Mr. Hamill. I went down into the main section of the precinct station where there is a long brass rail and a bench where the sergeant sits or at times perhaps the captain. However, I inquired specifically in a room which was labeled Detective Bureau——

Q. Of a police officer?

A. Yes, sir, of a police officer.

Q. What did he inform you?

A. He informed me that these prisoners were in the jail on the top floor. I went out then and took the elevator and went up to the jail.

A police officer there in uniform told me—I don't know his rank, didn't take down his number—he said I would have to get permission of Chief Walsh before I could see the prisoners.

I then went down to the second floor where Police Chief Walsh has his offices. Mr. Walsh was not in. I spoke to the man in charge who told me that Mr. Walsh was downstairs on the first floor and I would have to see him. I was then anxious to see him and I went downstairs to the first floor, down again to the detective bureau, the same place I had been before and they told me that Mr. Walsh had gone back upstairs. So I went back upstairs, went into Police Chief Walsh's office. He was there in the doorway and said, "Come in, what can I do for you?" I went in. I stood in the room at his desk with his pictures under the plate glass and spoke to him and he said he thought the prisoners had been taken to the Hudson County jail by this time. I said, "Well, all right, I will go up there and——"

Q. Did you?

A. I left at that point. I went outside. Mrs. Milgrim was waiting, and together with her and Miss Delcassi and one or two others, we went up to the Hudson County jail, took a bus.

At the jail I inquired of the man in charge as to the whereabouts of these prisoners. He said they had come in. I went to the phone, called up the offices of Isserman and Isserman, and inquired about getting bail for these men so that they could get out. I spoke to Mr. Abe Isserman, if I am not mistaken——

MR. HAMILL: Now don't——

Q. Did you make arrangements for bail? Were they admitted to bail?

A. They were not admitted to bail because the man in charge informed me——

MR. HAMILL: I object. They were not admitted to bail. I object to anything further.

Q. Where was this, at the jail?
A. At the jail.
Q. What did he say about seeing——

MR. HAMILL: I objec to what the man at the jail said.

THE COURT: Yes. There were fromal legal proceedings looking toward bail. I think we should have it proved.

MR. FRAZR: The bail had already been fixed, I understand.

THE COURT: Why I assume the minutes of Judge Botti's court would show that.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Now, you came to Jersey City about two thirty on the morning of November 29, is that right?

A. No, Congressman, I testified I came to New Jersey shortly after six o'clock on the morning of November twenty-ninth.

Q. What time did you arrive at Grove and Henderson Street?

A. Shortly after six in the morning.

Q. And then you went down with your suitcase, carrying your suitcase to 76 Montgomery Street?

A. That is correct.

Q. And you went upstairs to the meeting held in the hall of the Boot and Shoe Workers—is that the name?

A. That is right.

Q. Boot and Shoemakers organization?

A. Boot and Shoe Workers Union.

Q. What floor was that on?

A. Second floor, I think.

Q. You went up one flight of stairs to the hall?

A. Yes.

Q. And that was about what time?

A. About six thirty, I suppose, between six twenty-five and six-thirty, in that neighborhood.

Q. Did you say there was anyone there at the time?

A. Yes.

Q. About how many?

A. About fifty.

Q. About fifty were there. And they made arrangements then to go out and distribute these pamphlets, did they, or circulars?

A. I testified, sir, that there was a meeting in progress in this hall but I did not attend it. I was an observer.

Q. You cannot tell us then what you did at the meeting then, is that what you want us to understand?

A. Yes. I don't know what decisions they made.

Q. Then you came downstairs and you were searched?

A. No.

Q. Your baggage was searched?

A. When we went in, before we even went upstairs, before we even got into the building.

Q. Your baggage was searched?

A. Yes, I was grabbed from behind and pulled down the stairs. You will recall I testified to that.

Q. Then you saw the different persons whom you have mentioned, and others, being put in automobiles and taken away?

A. Well, Congressman Hamill, I am sorry if I didn't make myself clear.

Q. You may have made yourself clear and I didn't catch your answers or your remarks. I am asking you to give——

A. There is a sequence of events which I am anxious to make clear. When we came down to 76 Montgomery Street from the Grove Street Station, when we came there all was quiet.

Q. I want, if possible, to make a resume or digest of the testimony, and if I am wrong you can correct me. Now you came from the Grove Street Station to 76 Montgomery Street?

A. That is right.

Q. And you waited there until forty or fifty people got out of the meeting, is that right? There was a meeting in progress?

A. You will have to define what you mean by "there."

Q. At 76 Montgomery Street, second floor.

A. On the second floor?

Q. Wherever you were.

A. We were at all places at various times.

Q. When you got to 76 Montgomery Street and went upstairs——

A. After being searched we went upstairs.

Q. Yes, to the hall of the Boot and Shoe Workers Union?

A. Yes, and there was a meeting in progress at the time.

Q. And while the meeting was in progress where were you?

A. I stayed in the anteroom.

Q. All right. And after the meeting was over you came downstairs?

A. That is correct.

Q. When you came downstairs you went out on the street, did you?

A. Following the distributors, that is right.

Q. And then you saw a number of people being taken away in automobiles?

A. No, that was following the distribution.

Q. All right; tell us what happened after that.

A. After what?

Q. After you came out of the door at 76 Montgomery Street.

A. The distributors were down toward the Harborside Building.

Q. They went down then until they got in front of the tunnel entrance, about?

A. The tube entrance, you mean?

Q. And that is where——

A. The flying wedge formation took place.

Q. You spoke about a flying wedge, then you came back to the police station——

A. I then came back following the distributors who preceded me to 76 Montgomery Street.

Q. To the police station?

A. No, no, that was some time after.

Q. All right, where did you go to?

A. I followed the distributors who had gone back to 76 Montgomery Street. I followed them back to 76 Montgomery Street.

Q. You followed them back to 76 Montgomery Street after they went down to the tunnel, the entrance to the Hudson Tubes?

A. That is right.

Q. And these events occurred to which you have testified, the distributors then came back to 76 Montgomery?

A. That is correct.

Q. Then after they were at 76 Montgomery they came out again——

A. They tried to but were kept from coming out.

Q. And is that when they were put in automobiles, you say?

A. They were kept from coming outside.

Q. But afterward they were let out?

A. Afterward they were let out. You used the right expression. They were let out by the man in charge.

Q. So your testimony is, according to you, they were let out?

A. They were let out by the man in charge.

Q. And they were put in automobiles?

A. They were forced in automobiles.

Q. And after that did they go to the police station?

A. I have no means of knowing where they went with the exception of one man whose name I don't recall.

Q. Did you go to the police station?

A. I did.

Q. And afterwards you came to court?

A. That is correct.

Q. And attended the proceedings?

A. Both of them.

Q. And you say Chief Walsh and Commissioner Casey looked in through a window at the proceedings?

A. Among others, they were there.

Q. They were not doing anything else except observing the proceedings?

A. That is correct.

Q. Were you arrested?

A. No. I have never been arrested in Jersey City.

Q. I beg your pardon?

A. I have never been arrested in Jersey City. I would like to have that right.

Q. Now, Mr. Clendennin, you came there in order to distribute or assist in the distribution of these pamphlets regardless of the ordinance, is that correct?

A. Commissioner——

Q. Yes or no.

A. I have testified already that I came there to observe their actions. Not to distribute nor to assist in the distribution.

MR. HAMILL: May I ask the stenographer to read that question? I think if Mr. Clendennin will simply answer the question as simply as possible we will make much better progress.

(Question repeated by stenographer.)

A. That is incorrect.

Q. In what manner is it incorrect?

A. Because I have previously testified as to the fact that I was there to observe what went on, not to distribute nor to assist in the distribution of any leaflets, regardless of any ordinance there may have been.

Q. Do you deny having come there to take any part in this distribution?

A. That would depend upon your definition of what an observer's duty is. If you consider an observer as part of the distribution, then I was. If you consider an observer simply has no part in the distribution, then I was not. That would be up to you.

Q. Nobody is quarreling about the meaning of the word "observer."

A. I came there to observe what went on.

Q. You came to look at what was going on?

A. That is right.

Q. Did you come there to take any action of any kind?

A. Oh no. We were taking notes of what went on.

Q. I mean in the matter of distribution?

A. Absolutely not.

Q. Now, did anybody tell you in Pittsburgh to go to Jersey City?

A. Pittsburgh?

Q. Yes.

A. No.

Q. Didn't you say you came there from Pittsburgh?

A. Yes, but nobody had told me in Pittsburgh to go to Jersey City.

Q. You came of your own volition?

A. I was going to make—all right.

Q. Go ahead.

A. My own volition? It is part of my duty.

Q. You came here for the purpose of discharging what you considered to be your duty as a member of the organization, the Workers Union, is that right?

A. As an officer, as an appointed officer of the Workers Defense League, that is right.

Q. You are not a party in this cause?

A. Not this particular one, though I have other causes.

Q. All right. I will withdraw the question. The record will show that.

Q. Well, you are not an interferer in this cause, are you?

A. I am not a dictionary. I would have to ask for the legal definition of that, Senator.

Q. Did you come here under subpœna?

A. Here today?

Q. Yes.

A. Yes.

Q. You mean you did not come here of your own volition?

A. To this court today?

Q. Yes.

A. I would not have missed it for anything.

Q. I didn't catch that.

A. I say I would not have missed this proceeding for anything.

Q. That is, you are delighted to be here, to give this testimony?

A. I am delighted to be here to give this testimony, yes, as part of the case.

MR. FRAZER: Oh now——

Q. You said, "I would not have missed this for anything."

MR. FRAZER: He is here both voluntarily and involuntarily, that is the way I take it.

Q. When you said, "I would not have missed this for anything" what did you mean?

A. I mean that even if I had not been subpœnaed, as part of my duties to observe, the observation of workers'

rights, I would have been here as a spectator in this court to watch your actions and those of Dean Frazer.

Q. And as a voluntary witness?

A. Even if I was not a voluntary witness I said I would not have missed it for anything. I would have come as a spectator, Mr. Hamill. I am very glad to testify, naturally.

Q. Did you know that they were going to distribute circulars on November 29th in Jersey City?

A. Did I know of my own knowledge?

Q. Yes.

A. No.

Q. Well, had anybody told you?

A. That is what I would call common knowledge.

Q. Well then you did know what they were going to do?

A. Well, Mr. Hamill, it all depends upon your definition. Nobody has told me specifically. Nobody has come up to me and said, "Mr. Clendennin, people, CIO workers are going to distribute leaflets in Jersey City on November 29th."

Q. Let me state it this way: when you arrived and shortly before you arrived at Grove and Henderson, did you know that you were going to——

A. Observe.

Q. —76 Montgomery Street, and that men were gathering there for the purpose of distributing circulars?

A. Oh, of course. I was there to observe their actions——

Q. That is all, you did know?

A. Yes.

MR. HAMILL: I think that is all.

THE COURT: I will not ask this witness the questions I asked the other witness.

THE WITNESS: I would be very glad to——

MR. HAMILL: I have no objection.

THE COURT: He is not a party.

MR. HAMILL: But I do not see the purpose of it.

THE COURT: I will ask it only of the parties, members of the party organization, that is all.

(Witness excused.)

DAVID SILVERSTEIN, called and sworn on behalf of the plaintiffs, being examined, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Where do you live?

A. 2935 Ocean Parkway, Brooklyn.

Q. What is your business, Mr. Silverstein?

A. Business agent of Local 73, United Shoe Workers of America.

Q. Where does Local 73 hang out?

A. 76 Montgomery.

Q. What is its territory?

A. Our territory is Jersey state.

Q. The whole of the state?

A. The whole of the state, yes, sir.

THE COURT: I take it it is a labor union, is that right?

THE WITNESS: Correct.

THE COURT: What organization does it belong to?

THE WITNESS: United Shoe Workers of America.

THE COURT: Is it a craft or an industrial union?

THE WITNESS: An industrial union affiliated with the CIO.

Q. And how long have you held the position with Local number 73?

A. Two years now.

Q. Your operations include Newark and other cities, as well as Jersey City?

A. Correct.

THE COURT: What is your own trade?

THE WITNESS: My own trade, I am a shoe worker.

THE COURT: You are a shoe worker yourself?

THE WITNESS: Yes, sir.

Q. Have you any shops which are united in Jersey City?

A. Yes, we have three shops in Jersey City.

THE COURT: State where they are.

Q. What are the union shops?

A. The Paramount Slipper Company, 150 Bay Street, Jersey City, the Restful Slipper Company, 31 Wilkinson Avenue, Jersey City, the Norwalk Slipper Company, 48 Essex Street, Jersey City.

Q. How long have they been unionized?

A. They have been unionized over two years now.

Q. Now, that was before you came as business agent?

A. Yes.

Q. Now from the time that you first came—that would be back in 1935, would it?

A. I became business agent in 1936.

Q. Did you have any meetings of your union members?

A. Yes, we had members of our union, shop meetings and local meetings.

Q. Did you rent any business halls?

A. Yes. Our permanent headquarters was the White Eagle Hall, 335 Newark Avenue, and we also rented for shop meetings the Polish Hall at Bay Street and Henderson Street.

Q. Any other halls you used?

A. For affairs we used the Columbia Hall on Ocean Avenue. I don't remember the address.

Q. When you say affairs, what do you mean, balls and things of that sort?

A. Balls, yes.

Q. What was the affiliation of the union when you first came, was it with the American Federation of Labor or the CIO?

A. When I first became business agent in 1936 it was the Boot and Shoe Workers Union, affiliated with the American Federation of Labor.

Q. Did you have the same headquarters?

A. Yes, 76 Montgomery Street, the same headquarters.

Q. When was the change or was there a change from the American Federation of Labor to the CIO?

A. In June 1937.

Q. Now from the time you came in as business agent, to June, 1937, was there any difficulty about your obtaining a hall or the like?

A. No, none whatever.

Q. Did you have any difficulty in obtaining halls?

A. After November 29th.

THE COURT: Go ahead, please.

By MR. FRAZER:

Q. Well, I was asking you whether you had any difficulties in obtaining halls prior to your affiliation with the CIO and you said, I think, not until November 29th; is that right?

A. Right, that's correct.

Q. 1937?

A. November 29, 1937. After that we had difficulty in getting—in fact, we couldn't get any hall after that.

THE COURT: Just a minute, please. Don't make that a general statement. Tell us the details of your difficulties and what you did.

THE WITNESS: All right.

A. (Continuing.) The week of November 29th, that same week, we had a local meeting, and that same evening——

THE COURT: I don't think anyone can hear you. Speak up.

THE WITNESS: I don't speak loud enough?

Q. Speak slowly, Mr. Silverstein, will you?

MR. HAMILL: If you will speak more slowly and speak louder, we can hear you better.

A. (Continuing.) The week of November 29th, that was on Thursday that same week, we had the last local meeting at that hall, the White Eagle Hall. I tried again to book for another local meeting with the owner of the hall, and she told me that——

MR. HAMILL: No, I object to what she told him.

MR. FRAZER: Your Honor, this is a very essential part of the res gestae.

MR. HAMILL: That isn't the res gestae.

THE COURT: Just a minute. Did you name a particular person that you asked to rent the hall? Did you?

MR. FRAZER: He said the manager of the hall, the White Eagle Hall.

THE WITNESS: The White Eagle Hall.

THE COURT: Give the name of the manager.

THE WITNESS: I don't remember her name.

MR. HAMILL: How are we going to rebut that?

THE WITNESS: There is a woman in charge there.

THE COURT: What?

THE WITNESS: There is a woman in charge of that hall, the White Eagle Hall.

THE COURT: What is her name? You can find it out, if you don't remember it, can't you?

THE WITNESS: I can find it out, yes.

THE COURT: All right.

By MR. FRAZER:

Q. What did she look like?

THE COURT: He said he could find it out.

MR. FRAZER: Well, perhaps Mr. Hamill will allow the witness to give that name and we will put it in the testimony, rather than to call the witness back for that purpose.

MR. HAMILL: I don't exactly get what you mean. You mean does he know the——

MR. FRAZER: He knows her but he doesn't know her name, the manager of the White Eagle Hall; she is the woman he has in mind. He doesn't recall her name.

I suppose what you want it for is by way of rebuttal.

MR. HAMILL: Suppose we wanted to subpœna that manager?

MR. FRAZER: Exactly.

MR. HAMILL: That is it.

MR. FRAZER: I will get the name and submit it to you.

MR. HAMILL: How would that help us? If he doesn't give the name? And this is very important.

MR. FRAZER: I will get the name for you, Mr. Hamill, and give it to you. Will that be satisfactory?

MR. HAMILL: Excuse me a minute.

(After conferring with associates.)
No, we cannot consent to that.

THE COURT: Consent to what, Mr. Hamill?

MR. HAMILL: That he testify that he met the manager. We want to know who the manager is.

THE COURT: Well, we will find out. That is what Dean Frazer said, that he would get the manager's name.

MR. FRAZER: I will consent that it all be stricken out if I do not give you the manager's name.

THE COURT: You see, we have no jury here.

MR. HAMILL: All right.

Q. Is she a stout, blond woman?
A. No, she is a short, skinny, dark woman.
Q. Then the picture I have is all wrong, isn't it?

MR. HAMILL: Are you speaking from your recollection or your knowledge?

Q. Well, Mr. Silverstein——
A. That manager of the hall told me that——

MR. HAMILL: No, I object, if your Honor please. At this point——

THE COURT: Well, what happened. Do I understand that you owned this hall or leased this hall or something?

THE WITNESS: We had no lease of that hall. We were holding our regular local meetings and also shop meetings at that hall, and after that——

THE COURT: How often did you hold those meetings?

THE WITNESS: About twice, sometimes three times during the month we had meetings.

THE COURT: And you paid for them, is that right?

THE WITNESS: Yes, that's correct.

THE COURT: How much did you pay for each meeting?

THE WITNESS: If it was a local——

MR. HAMILL: May I say this? That was up to November 29, 1937?

THE COURT: Yes.

THE WITNESS: For local meetings we paid $6, and for shop meetings $3 for meetings.

THE COURT: All right. Then you on a certain day—what day was it, do you remember?

THE WITNESS: From that week of November the 29th—I don't remember the date; it was December; since that date on, we could not get that hall any more.

THE COURT: This same hall, is that right?

THE WITNESS: This same hall, the White Eagle Hall; we could not get that hall any more.

By MR. FRAZER:

Q. Why not?

THE COURT: I suppose the manager refused to give it to you?

A. The manager refused to give us the hall on the basis——

MR. HAMILL: Wait, I object. Not on the basis. That is a conclusion, evidently.

Q. Well, what did the manager say?

THE COURT: What did she say?

A. The manager said——

MR. HAMILL: I object to what the manager said.

THE COURT: I will allow it. You may have an exception.

MR. HAMILL: Your Honor will grant me an exception?

THE COURT: Exception.

MR. HAMILL: It is pure hearsay.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. What did she say, Mr. Silverstein?

A. I can continue?

Q. Yes.

A. The manager said that there is a man from the Court House of Jersey City has been down three times that week and warned her not to rent that hall any more to the Shoe Workers.

MR. HAMILL: I ask that that be stricken out, a man from the Court House came down.

THE COURT: Yes. Did she identify the man?

THE WITNESS: No, she did not identify the man.

THE COURT: Well, we will have to have the manager here then.

MR. HAMILL: I ask that that be stricken out.

THE COURT: I will just leave it in pending the calling of the manager. That would not be so if this were a jury case, of course.

Q. Where is this hall in relation to the Court House?

A. The Court House—I am not acquainted with where the Court House it. I could not say that.

Q. Now, what about Columbia Hall?

A. The Columbia Hall, on December 4th we had scheduled a dance for the United Shoe Workers of America, our yearly dance, and December 4th when all our people came to the dance——

Q. Now, wait a minute. What had you done in preparation for that dance, Mr. Silverstein?

A. In preparation for that we have made a contract with a band of music. We have also printed tickets and issued to all our members. We have also issued circulars, through the mail, to our members, informing them of this dance which is being held December the 4th on Saturday night. Then our members came to that dance at that evening.

Q. Did you have any arrangement for the rental of the hall?

A. Yes. We have made arrangement several weeks before for that Saturday night, with the hallkeeper.

Q. Had you paid any deposit on it?

A. No. That was——

MR. HAMILL: Now, if your Honor please, I don't want to be too captious——

THE COURT: No.

MR. HAMILL: —but on a thing like this, you see the witness only has to nod his head to answer those questions and the questions are purely leading.

THE COURT: Yes, I think they were leading.

MR. HAMILL: The question should be, what did you do.

THE WITNESS: All right.

A. (Continuing.) Several weeks before, we have made arrangements with the hallkeeper that we are going to have our annual dance at that hall.

THE COURT: And do you remember the name of that hallkeeper, Mr. Silverstein?

THE WITNESS: No, I don't remember the name of that hallkeeper neither.

THE COURT: Well, could you furnish us with that also, Dean?

THE WITNESS: I can furnish the name of that man too.

THE COURT: All right. Go ahead.

A. (Continuing.) We have not given him any deposit because previous dances that we held in 1936 and in 1935 we have made the very same arrangements with the hallkeeper, and at that night, when we came down to the dance, the hallkeeper—we find out the hall is closed on us. Of course, I went to the hallkeeper and asked him what the meaning of that. He told us that he can't give us the hall.

MR. HAMILL: I object to what the hallkeeper told him, if your Honor please.

THE COURT: He may answer it.

MR. HAMILL: Your Honor admits it?

THE COURT: Yes.

MR. HAMILL: Your Honor will grant me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. The hallkeeper told us that he can't let us have the hall because we are a CIO affiliate.

Q. And who said you couldn't?

A. The hallkeeper.

MR. HAMILL: I ask that that be stricken out, for the sake of the record.

THE COURT: Yes.

MR. HAMILL: Your Honor will——

THE COURT: That should be stricken out.

MR. FRAZER: What is that?

THE COURT: That should be stricken out. That has no relation to these defendants.

Q. Did he say why the CIO could not have it?

A. He said that because we had that circular distribution, that was on a Monday, and this was following Saturday, because of that he said he cannot let us have the hall, he could not get a permit for our dance.

Q. Who refused him the permit?

A. That is what the hallkeeper told me, that he had to get a permit from the police department to hold the dance, that he can hold that dance at that night.

MR. HAMILL: Well, may I be understood as objecting to this whole line?

THE COURT: I think we will have to have this testimony from the mouth of the hallkeeper, Dean Frazer.

MR. HAMILL: This is a very important part of the case.

THE COURT: Yes. I will strike it out.

MR. FRAZER: I would ask an exception, sir.

THE COURT: Yes. Get his name and you can subpœna him.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. FRAZER: I don't know that I desire to call him as my witness, sir.

Q. What about the Polish Hall?

A. In the Polish Hall we usually had some meetings because the place there could hold over a hundred workers, a small place there that we used to get, and after the, following the, November 29th, when I wanted to book for shop-meeting, the hallkeeper told me that all the nights are taken, so I kept on asking him for over a month's time or period that I can book a night for any room, the large room, for which he charges ten dollars, or the small room, and he insisted on that all the nights, all these rooms are all booked. That was the statement of that hallkeeper of the Polish Hall.

Q. Who is he? Do you know his name?

A. No, I don't know his name.

Q. Can you get his name?

A. Yes, I can get his name.

MR. HAMILL: I ask that this be stricken out.

THE COURT: Get the man.

MR. HAMILL: Do I understand it is stricken out, if your Honor please?

THE COURT: Yes.

MR. FRAZER: I don't understand that the Court is striking out the testimony of the application having been made.

THE COURT: No, no, certainly not.

MR. HAMILL: Oh, no.

THE COURT: Of course not.

MR. HAMILL: Just as to what the manager or person told him.

MR. FRAZER: And that is subject to being connected up by bringing their names.

MR. HAMILL: Well, our objection is that his testimony is incompetent, that it is hearsay. Of course, if you produce the manager, then you will have direct testimony; but that this is not testimony, it is incompetent.

Q. Now, since November 29th have you tried elsewhere to get halls?

A. Since——

MR. HAMILL: Excuse me. I didn't get that.

MR. FRAZER: Have you tried elsewhere to get them?

A. Since November 29th I have had the executive board of the local assign a member of the executive board, which that member was Samuel Macri and Rudy Loreco, to go looking around for a hall in Jersey City, and the report that I got——

MR. HAMILL: I object to the report you got.

THE COURT: Yes.

A. The report I got from Samuel Macri, a member of our executive board——

MR. HAMILL: I object to the report he got.

Q. Well, have you succeeded in getting any hall?

A. I have not succeeded in getting any hall in Jersey City.

Q. Who was it that went out with Mr. Macri, on your appointment?

A. Rudy Loreco, a member of our executive board; R-u-d-y L-o-r-e-c-o, a member of the executive board of our local.

Q. Now, Mr. Silverstein, have you any knowledge of the conditions in the non-union shop, shoe shops and the slipper factories of Jersey City?

MR. HAMILL: I object.

THE COURT: Well, if he has.

MR. HAMILL: Sir?

THE COURT: If he has any personal knowledge of it.

Q. Any personal knowledge?

A. I have personal knowledge. There is at present three factories, three shoe factories, in the Interborside Building.

Q. What are they?

A. They are the Inter-Allied Slipper Company, Oxford Slipper Company, and Avon Shoe Company. These shops at present employ unskilled help from six to seven dollars a week, and they make them work from fifty to sixty hours a week.

MR. HAMILL: Now, your Honor, I object to that and ask that that be stricken out. Are we responsible for that? Do they hold us responsible for that?

THE COURT: You will have to call the shops themselves. I can't take his testimony.

MR. FRAZER: I think it is perfectly good testimony.

THE COURT: Oh, no.

MR. FRAZER: If the witness is cross-examined.

THE COURT: You will have to call the managers themselves.

MR. HAMILL: I ask that it be stricken out.

THE COURT: Subpœna their books, if that is so.

MR. FRAZER: I don't hear you.

THE COURT: Subpœna their books, if that is a fact.

Q. How long have those plants been in Jersey City, do you know?

A. The Oxford Slipper Company, in 1937 they transferred from New York, which was a union shop——

MR. HAMILL: If your Honor please, I object to all this.

THE COURT: You must not say something you don't know.

MR. HAMILL: He doesn't know anything about this except what he is told.

A. I know about it. I have been involved in it.

MR. FRAZER: He knows of his own information.

MR. HAMILL: He didn't say that, and it is evident that he knows only from what someone told him.

A. These facts I know, and I participated in them as a business agent of that local. When that shop went away from New York it was given over—at that time it was the Boof and Shoe American Federation of Labor union. That shop was then transferred from New York to Jersey district.

MR. HAMILL: I object on the ground that it is irrelevant to any of the issues in this case.

MR. FRAZER: I think it is very clearly relevant.

MR. HAMILL: Well, may I ask——

THE COURT: The only relevancy that I can see, Congressman, is if it is the contention of these plaintiffs that due to their organization they have improved labor conditions as contrasted with conditions where there was no organization, I think that would be relevant. That's all I think would be relevant.

MR. HAMILL: I mean what would it be relevant to?

THE COURT: I suppose it would be relevant to those paragraphs of the bill that ask for permission to conduct labor organization activities.

MR. HAMILL: Well, it is——

THE COURT: I think we are all safe in assuming that the object of labor organizational activities is to improve the condition of the working people.

MR. HAMILL: Yes, I agree with your Honor perfectly; but I mean I don't see exactly how the City of Jersey City or its Mayor or its police force or the members of the Commission are to be charged with a conspiracy by proof that these conditions existed.

THE COURT: Well, there would have to be further proof that they had interfered with the organization designed to improve the conditions. If they have not interfered, of course then it would be irrelevant.

MR. HAMILL: All right. If that is the view of your Honor I am perfectly satisfied.

THE COURT: But it will have to be shown——

MR. FRAZER: Yes, sir.

MR. HAMILL: But we are wandering so far afield here that we have got to keep the case within some kind of definite limits.

MR. FRAZER: I intend to connect this up, sir.

THE COURT: It would have to be shown more from the personal knowledge rather than from hearsay.

A. (Continuing.) That shop when it was transferred from New York district to Jersey district, it became under my jurisdiction. I went up to the manufacturer and I told them that he has to continue——

MR. HAMILL: I object to what he told the manufacturer.

THE COURT: Yes, you must not say that.

A. (Continuing.) As business agent it was my duty to see the manufacturer and insist that he should continue his

contractual relations with the union, which the manufacturer refused; and on this basis we put on a picket sign and that was the nearest place from the Harborside Building, that is on Montgomery Street, and these pickets, two men with pickets we put on, were by the police taken off, the signs, and were taken and put into the Hudson police station——

MR. HAMILL: Now, did you see——

MR. FRAZER: One moment, let him finish.

MR. HAMILL: I object on the ground he did not see it.

A. I saw it.

MR. HAMILL: All right, go ahead. That's where I am wrong. Go on.

A. (Continuing.) I put on the picket signs on these men and I watched these men picket. About ten minutes later, came over two police in uniforms and took off the signs and took these men and told them to get down in the tube station and go back to New York. I went over and told the police that these men are Jerseymen and he can't send them there, they belong to Jersey. So the police told us, well, then, keep away from here.

The following morning we did the same thing. We put on again men with pickets and the same thing repeated itself; after five minutes' picketing the policemen came over and took again off the signs. We did that, we practiced that for about two weeks.

Q. When was——

A. (Continuing.) And after that it came to court where we tried to get an injunction, on that Oxford case. After we finally got an injunction——

MR. HAMILL: If your Honor please, I object to all this as irrelevant.

THE COURT: Yes.

THE WITNESS: All right.

THE COURT: When it comes to talking about the courts, we will have to keep that out.

THE WITNESS: I will keep that out.

A. (Continuing.) I just want to add that the conditions at present in the Oxford relevant to the union shops in Jersey are that the workers, the unskilled workers, work from fifty to sixty hours——

MR. HAMILL: I object to this testimony.

MR. HERSHENSTEIN: Wait, wait, wait.

THE COURT: You must not say that. We will have to have the men who run the shop and their books here, if you are going to prove that.

What is the name of the man who owns that shop? That will save us trouble, maybe. Do you know?

THE WITNESS: Goodman.

THE COURT: Goodman?

THE WITNESS: Oh, no, not Goodman. I don't know the name.

Q. Gold?

A. Gold, that's right; Gold; Mr. Gold.

MR. FRAZER: Will you have Mr. Gold in court for us?

MR. HAMILL: No, I am not going to help you to prove your case. That's up to you. You have the laboring oar.

THE COURT: You can subpœna him, Dean.

MR. FRAZER: Yes, that's very true.

A. (Continuing.) I want to state if I am allowed——

THE COURT: Wait a minute, now, Mr. Witness. No one has asked you any questions.

THE WITNESS: All right.

Q. Now, this was the Inter-Allied you were speaking of?

A. Oxford Slipper Company.

Q. Oxford Slipper Company. And when was that?

A. 1937, at the beginning of 1937.

Q. Now, are there any representatives of the Jersey City police force about your headquarters at 76 Montgomery Street?

A. Very often.

Q. Have you seen them personally?

A. Yes.

Q. Would you be able to recognize him if you saw him, or them?

A. I would.

Q. Are they in plain clothes or in uniform?

A. Plain clothes.

MR. HAMILL: I object to this. There are officers around this court room now.

MR. FRAZER: I don't doubt it.

THE COURT: I don't see the point of this, Dean Frazer.

MR. HAMILL: I mean what is the difference whether they are or are not?

THE COURT: I will sustain it.

MR. HAMILL: Officers around 76 Montgomery Street.

MR. FRAZER: I simply wish to show that this place is under continuous surveillance. I think I have a right to show that.

MR. HAMILL: Well, even if it is, is there anything wrong about that?

MR. FRAZER: I think so.

MR. HAMILL: I don't.

Q. How often have you seen officers of that type about 76 Montgomery?

MR. HAMILL: I object to the use of "that type." Is it a word of derogation or a word of description?

MR. FRAZER: No, he described them as plain clothes men.

Q. They were plain clothes men, weren't they?

A. Yes.

Q. How often do you see them?

A. Practically every day.

Q. And what do they do when they are there?

A. Stay around, walk around.

Q. And how large a radius, how great a distance from your——

A. From the corner up about the middle of the block.

Q. And how long is that distance?

A. A few hundred feet.

Q. Now, did any of those officers whom you saw there participate in any way in this distribution on November 29th?

A. Yes. These are the men that participated on November 29th in putting the man into the cars and also in confiscating the leaflets; the same men.

Q. Who did they put in the cars on that day that you knew about?

A. From the Shoe Workers I have called upon volunteers to distribute leaflets and had the volunteer response from several, and after the distribution of the leaflet, these men reported back to the office, and I told them that they can go back to work.

MR. HAMILL: I object to what he told them.

THE COURT: Yes, please.

MR. HAMILL: Or to what they told him.

A. (Continuing.) These men going back to work, leaving their building at 76 Montgomery Street, and I also went along with them—five of us were taken in two cars, and we were taken out to Harrison and in Harrison we were put out.

Q. Now, let's get that. That was on November 29th?

A. On November 29th.

Q. What time, Mr. Silverstein?

A. That was around before nine o'clock.

Q. And who were the men?

A. The men, I don't know the men. You mean the men from our union?

Q. Yes.

A. Yes, I know the names.

Q. Who were they?

A. James Scrudato.

THE REPORTER: Will you spell it, please?

A. (Continuing.) James S-c-r-u-d-a-t-o. John Gotowsky.

MR. FRAZER: Spell that.

A. (Continuing.) G-o-t-o-w-s-k-y. Milton Felker.

MR. HAMILL: Spell Felker.

A. F-e-l-k-e-r. Isaac Rund, R-u-n-d, and myself.

Q. And what did they do to you?

A. And as we were leaving 76 Montgomery Street they put us in cars and they took us out to Harrison Highway.

Q. Well, were you distributing them?

A. Leaflets?

Q. Yes.

A. That was after the distribution of leaflets. And there are the numbers of the cars that we were in: H-43752; H-18820.

Q. Where were those men going when they left 76 Montgomery?

A. These men were going to work, and myself—I was going to the Central Shop, to one of our union shops, to settle a dispute.

Q. And did you tell the officers where you were going?

A. Yes.

Q. When they took you?

A. I told them.

Q. What did they say?

A. They said that they would take us where they pleased.

Q. Now, how far was it that they took you?

A. From 76 Montgomery Street they took us out to Harrison Highway.

MR. FRAZER: Harrison Highway, did you say?

THE WITNESS: Out in Harrison, on the highway.

MR. HAMILL: On the highway?

THE WITNESS: Yes.

Q. Now, how did you get back from there?

A. The people, my boss went to work——

MR. HAMILL: I object. What is the relevancy of how they got back?

THE COURT: Yes, sustained.

MR. HAMILL: Your Honor overrules the objection?

THE COURT: I have sustained it. Sustained, I said.

MR. FRAZER: I ask an exception.

(Which exception is duly allowed and sealed accordingly.

(Sealed)

MR. FRAZER: It seems to me that we have a right to show how these men had to get back to their work,

the means that they took after they had been thus illegally deported.

MR. HAMILL: Well, what would that add to your case?

THE COURT: I will sustain the objection.

MR. FRAZER: I will ask an exception. I am bowing to the Court's ruling.

THE COURT: Yes, you may have an exception.

Q. Have you had any other experiences with picketing in Jersey City except those that you have mentioned?

A. Yes. In 1936 we organized the Paramount Slipper Company. We had 90 per cent. of the workers out, and we put on a picket sign, a few of the workers wore picket signs. Police officers, uniforms, tore the signs off these men——

MR. HAMILL: Now, if your Honor please, at this point I object to this testimony as being too remote, unless it be for the purpose of showing a concerted plan and conspiracy.

MR. FRAZER: Well, it all is.

MR. HAMILL: That is what it is for?

MR. FRAZER: Oh, certainly, certainly.

MR. HAMILL: All right, if it is for that, let him go ahead so far as I am concerned.

A. These men were given a beating by the police officers and were torn off, the signs, and were taken down to the Hudson Tube Station at Grove Street and told to get back to New York. Some of them were from New York, but others were not from New York. They had to take the train to Journal Square and take a bus, to come back.

MR. FRAZER: Cross-examine.

A. (Continuing.) Then there is another instance.

Q. All right.

A. If you want me to continue.

Q. I beg your pardon. Another instance?

A. In 1937 the Uneeda Slipper Company, now a liquidated firm, no more exist, moved into the Harborside Building——

MR. HAMILL: This is an old case that he is going over now.

THE COURT: They went bankrupt, didn't they?

MR. HAMILL: Yes.

THE WITNESS: Yes.

THE COURT: In this court.

MR. HAMILL: I think they are now in the union, aren't they?

MR. FRAZER: Go ahead.

A. When that firm moved over from Brooklyn to the Harborside Building, and they have broken the contract with the union, at that time I was a Jersey representative, had the shop, the case was transferred to me from New York, and I put on a picket sign there, and there too the police took off the signs and told these men to get away from there.

Q. What did the signs have on them?

A. The signs had on "Uneeda Slipper Company, on strike, Boot and Shoe Workers Union, American Federation of Labor." At that time we were an American Federation of Labor Union.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Now, you told us that there were plain clothes men at 76 Montgomery Street?

A. Right.

Q. Is that right?

A. Correct.

Q. And by that I suppose you mean that they belonged to the police?

A. That is what I mean.

Q. And how do you know they belonged to the police?

A. The same men when we were distributing leaflets on November 29th, I saw these men participating in arresting the men that were distributing the leaflets, and myself, I was not arrested. That is why I know these men are detectives.

Q. That is, you know they are detectives because you saw them arrest somebody?

A. Right.

Q. Now you told us that these plain clothes men were hanging around 76 Montgomery Street, did you?

A. Yes.

Q. And don't you know there are two banks on that block?

A. I know.

Q. And did you ever find out whether those men were watching the banks?

A. Most of the time there is a uniformed policeman across the street, watching the bank.

Q. Yes, watching the bank.

A. That is right.

Q. You know that on that block they always have plain clothes men and men in uniform, watching the banks, don't you?

A. I don't know that.

Q. Well, you know they have plain clothes men watching the banks?

A. I don't know that.

Q. They didn't do anything to you while they were there, did they?

A. No.

Q. You didn't like to see plain clothes men and police on the streets, did you?

A. Not that I don't like to see them, but I feel they are there too much, in front of 76 Montgomery Street.

Q. You mean they should have consulted you as to the disposition of the various police officers?

A. I didn't say that.

Q. Was there anything you had to conceal that made you uneasy when the police were around?

A. No, I have nothing to conceal.

Q. Well then, why did you object to them being around?

A. Because I have contacts with workers from the open shops that I am organizing, and when these workers come around to 76 Montgomery Street to see me and they see suspicious characters downstairs, the next time——

Q. You mean the plain clothes men and the policemen, do you?

A. The plain clothes men. The next time they are afraid to come around, that they may get a report, and the next day lose their jobs.

Q. All right.

MR. HAMILL: That is all.

THE COURT: Just a minute. As he is a member of one of the party unions to this bill I am going to ask him those questions. I am going to ask——

MR. HAMILL: Now, if your Honor please, at this point I do not see the relevancy of asking a man what political party he belongs to or what is his religion; and in order that I will not be considered as consenting I want your Honor to know that I object. I didn't object to the other because it is true I said I had no objection, but after consulting with counsel at this table with me, we have come to the conclusion that it is irrelevant, and that we ought to object, and therefore I do object, as not being an issue in this case.

THE COURT: Well, just a minute. I understood, perhaps I misunderstood, if so, correct me, Mr. Hamill, from some assertions, both in the bill of complaint and

in the defense, the answer rather—there was some assertion that membership in one particular party or the like had some bearing upon the issues. If it has not, why, of course, then we will eliminate it entirely.

MR. HAMILL: I don't think it has, but I want to be squarely on the record as objecting to this testimony. Now it is true that when the first questions were answered, Mr. Frazer and I had agreed that it would be all right for your Honor to do it, but after consulting with my associates at the table we have come to the conclusion that it is irrelevant, and I wish to enter the objection.

THE COURT: Well then, if the membership in any particular party is not an issue in the case, there will be no testimony on the point. Is that correct?

MR. HAMILL: That is right, yes, that is right.

THE COURT: That may be so; then of course I won't ask the question.

MR. FRAZER: I believe it is a proper thing in the identification of the witness and I am perfectly willing to ask the question.

THE COURT: No, I don't think those personal questions should be asked, Mr. Frazer, unless they are going to be an issue in the case and Mr. Hamill says that although the pleadings might be said to tend that way, perhaps it is not going to be an issue in the case. Is that what I understand?

MR. HAMILL: It is not going to be an issue in the case? I have not yet seen the question of identification in any record, asking a man what is his religion. Ask him what is his business, where he lives.

THE COURT: Yes, I will not permit it.

MR. FRAZER: Very well, it has been withdrawn as an issue in the defense.

THE COURT: That is correct—is that correct, Congressman?

MR. HAMILL: I do not understand.

MR. FRAZER: I understand you withdraw that as an issue.

MR. HAMILL: No, we withdraw nothing. We place squarely on the record at this time our objection to the asking of questions concerning race or religion or politics, and we do it on the ground that they are irrelevant, without withdrawing one iota of any defense we may see fit to offer under our answer.

THE COURT: Well, do I understand you, Congressman Hamill, that you cannot make a defense of any of those issues?

MR. HAMILL: If we cannot make the defense, then we cannot make the defense, but I am not voluntarily withdrawing anything, as counsel suggests. We leave that to be dealt with in the judgment of your Honor.

MR. FRAZER: There are certain allegations in the bill, as your Honor has stated, which indicates that some of the defendants have made statements to the effect that certain witnesses are Communists, Reds, and other things of that kind and that the CIO, as a whole, is a Red institution. I think it is quite proper to show that the members of the CIO are not that, and if Mr. Hamill says that that is not a part of the defense——

MR. HAMILL: No, Mr. Hamill is not saying that it is not part of the defense.

THE COURT: It is a little late now and we are about to adjourn. I will decide that question in the morning one way or the other. Otherwise I shall ask questions at least bearing on the defense, or I will allow counsel to, it makes no difference.

MR. HAMILL: All right, as long a we have our objection on the record, that is all I am concerned with.

THE COURT: I am not going to ask anything now.

MR. FRAZER: May I ask this witness now—I don't want to bring him back——

THE COURT: No, I will not allow him to be asked now. It can be stipulated as to the fact.

MR. FRAZER: Will you stipulate with me as to what his answer will be on the record? I do not want to bring him back merely to ask one question.

MR. HAMILL: Well, what is the question?

MR. FRAZER: What his religious belief is and what his avowed political faith is.

MR. HAMILL: Well, it can be stated over objection —that we objected and the Court admitted it.

THE COURT: I am going to sustain your objection, Mr. Hamill, if that is not in the defense. I know Dean Frazer wants to ask the man his political or religious belief. I think it is a matter of his own conscience, so to speak, but if they are matters of defense, then we must inquire into them.

MR. HAMILL: We will stand on our objection and leave it to your Honor's judgment. We say that under any defense we have that question is irrelevant.

THE COURT: As to what their political belief is?

MR. HAMLIL: Yes, as to their political beliefs.

MR. FRAZER: I think that is a very fair statement.

MR. HAMILL: That is as to this witness, as to asking this particular witness.

THE COURT: What I am trying to avoid is, after the witnesses have all gone, I do not want to have to

then listen to a defense on the political beliefs of the witnesses who have gone, that is all.

MR. HAMILL: This man is not a party to the cause.

THE COURT: Oh yes, he is a member of the CIO union, he tells us.

MR. HAMILL: He is not a party to this cause.

THE COURT: He is a member of an organization which is a party, isn't he? If not I am wrong.

MR. HAMILL: But does that make him a party to this suit?

THE COURT: Now think this over, over night, because I am going to adjourn. I understood from the pleadings that you took the position that certain of these parties had political beliefs that you thought entitled you to take certain actions.

MR. HAMILL: There is nothing in the answer. I think the answer is merely a denial of their allegations.

THE COURT: Plus their bill it gives that impression.

MR. FRAZER: The charges of the bill are to that effect.

THE COURT: Well, you can state your position more clearly in the morning. We will adjourn now until 10:30.

(Adjourned to 10:30 A. M. Thursday, June 2, 1938.)

Thursday, June 2, 1938.

Case continued.

Appearances as before.

THE COURT: Perhaps there was a witness on the stand.

MR. FRAZER: No, I think not, sir. The cross-examination had finished.

THE COURT: Had it been completed?

MR. FRAZER: Yes, sir.

THE COURT: Then call your next witness.

MR. FRAZER: May I, before calling a witness, state to the Court that in accordance with Mr. Hamill's statement yesterday that he would be willing to abide by the statement of counsel in regard to the writ of certiorari, that I have made inquiry of counsel in that writ, who informs me that the writ was allowed, the allocatur signed, and that the writ had been served and the return made and filed; that that is the condition of the writ now, and that there has been no withdrawal of it.

MR. HAMILL: Well, I am talking about the case where there were five men who served five days.

MR. FRAZER: That is the one I am talking about, sir.

MR. HAMILL: And I said that Mr. Kapelsohn—it is too bad that he isn't here because he would know all about it—leaving it to him to make an agreement that the writ be withdrawn, and I sent him to a member of the Department, Mr. McCarthy, and I thought and still think that the writ has been withdrawn; but if you have verified it, of course I will not press that assertion in

the face of your statement after investigation; but that was my understanding of it.

MR. FRAZER: I verified it from the attorney of record in the matter, that that is the position of it.

MR. HAMILL: From Mr. Kapelsohn?

MR. FRAZER: No, sir, from Mr. Rothbard, who is the attorney of record.

MR. HAMILL: Well, it was Mr. Kapelsohn who saw me about the matter.

THE COURT: Well, do you think then——

MR. HAMILL: If we think it is important we can telephone Mr. Kapelsohn and ask him to come here.

THE COURT: Has it been argued?

MR. FRAZER: No, it has not been argued; it was only allowed at this last term of court; the writ was allowed. The argument in normal course would take place at the October term of the Supreme Court.

THE COURT: Next October?

MR. FRAZER: Yes, sir.

THE COURT: Was application made for bail in the meantime?

MR. HAMILL: If your Honor please, I am going to get in touch with Mr. Kapelsohn when I can, probably during the noon recess.

THE COURT: All right.

MR. FRAZER: There is no question as to bail in this case, your Honor, because it was a jail sentence of five days which was served——

THE COURT: Oh, it was served?

MR. FRAZER: —before the writ was allowed; yes, sir.

THE COURT: Well, I wondered if there had been application for bail.

MR. FRAZER: There had originally been but that had been denied.

THE COURT: Well, did that appear in the record? You mean it had been made to Jude Botti and he denied it?

There was an effort made immediately for a writ of certiorari to review the conviction and that in itself would have stayed the sentence, if granted.

THE COURT: I think we ought to have all those papers. I mean, ultimately.

MR. FRAZER: I would also like to ask Mr. Hamill, for the purpose of saving time, whether he would be willing to admit the following: that there are a large number of industrial plants located in Jersey City which are engaged in interstate commerce within the meaning of the Wagner National Relations Act, that is, that these plants obtain raw materials through the channels of interstate commerce or ship their finished products to other states through the channels of interstate commerce, or that they do both.

MR. HAMILL: My answer is no, I could not possibly know that as corporation counsel. If I had been given these requests before court opened and not have them sprung on me in the middle of a trial, I would be able to request other departments to make an investigation and instruct me.

MR. FRAZER: I would be very glad to give Mr. Hamill an opportunity.

THE COURT: Give him a list of the plants, too.

MR. HAMILL: How can I possibly know that as a lawyer?

THE COURT: This is just to check it up, Mr. Hamill.

MR. HAMILL: I mean, the character of the request, how can I possibly know that? If I were to ask you the same question regarding Newark—and you have lived here all your life——

MR. FRAZER: I would be perfectly willing to admit that there are a great many plants in Newark engaged in interstate commerce, and I will be perfectly willing, if the occasion arises, as corporation counsel of Newark, to admit it as a fact.

The purpose of the request is clear. The Wagner National Relations Labor Act applies throughout the United States, including Jersey City. Employees in plants engaged in interstate commerce are under the terms of the act assured the right of self-organization and the right to select an agency to represent them in collective bargaining. The act removes all doubt as to whether the CIO had a lawful, legitimate object in entering Jersey City for the purpose of conducting organizational activities.

That is the purpose for which I ask the admission to be made, to save time. Among the plants which I suggest as being so engaged are these:

Colonial Shoe Corporation
Mallinckrodt Chemical Works
Baker Paint and Varnish Company
Avon Shoe Company, Inc.
Restful Footwear Company
Mutual Chemical Co. of Ameriea
Continental Can Company
Joseph Dixon Crucible Company
LaParee Undergarment Co.
Kraft & Phoenix Cheese Corporation
Colgate Palmolive Peet Co.
A. B. See Elevator Co.
Swift & Company

MR. HAMILL: I object. Are you testifying, Mr Frazer?

MR. FRAZER: I am merely asking if you are willing to admit that these industries are located in Jersey City and that they are engaged in interstate commerce within the terms of the Wagner Act?

MR. HAMILL: I do not admit anything, and you will have to prove it. And regarding that statement, I merely want to call the attention of your Honor——

THE COURT: All right, Mr. Hamill.

MR. HAMILL: I want to be heard.

THE COURT: Certainly.

MR. HAMILL: The purpose of this request is clear: "the Wagner National Labor Relations Act applies throughout the United States, including Jersey City." I merely want to remark that the impulse to be pert, if not impertinent, applies to dignified deans as well as to ordinary individuals.

MR. FRAZER: I confess to common humanity.

THE COURT: It may even apply to judges.

MR. FRAZER: Maybe Mr. Hamill will admit that those industries which I have mentioned are situated in Jersey City.

MR. HAMILL: Mr. Hamill will admit nothing, and Mr. Hamill is not here to help you try your case. That is the second request you have made.

MR. FRAZER: I hope to make a number of requests, Mr. Hamill, to shorten the matter.

MR. HAMILL: You had a chance to do it the other day and refused to do it, and said that you would not do it.

THE COURT: Will you check up on the list of plants and see how many of them you agree do come within the decision of the Wagner Act case?

MR. HAMILL: I will do that. I will hand it to the department of the government in the city government that might be able to give me the information, and if I can get it I will produce it.

THE COURT: Give Mr. Hamill the plants.

MR. FRAZER: The list of plants, yes, sir. If Mr. Hamill will bear with me I will have some copies made of this, which is my only list.

THE COURT: Can I ask you again, can I renew my question of yesterday? I think we would all like to know whether you have as a defense, or intend to have as a defense whether any of the plaintiffs have anything to do with any particular political party? There is no use trying to conceal it, the Communist party?

MR. HAMILL: I understand your Honor wants me to consent——

THE COURT: No, I don't. I don't want you to consent to anything. I just want you to tell me something.

MR. HAMILL: Well, thank you, your Honor, because it gives me an opportunity to make a few remarks, which I very much wanted to call to your Honor's attention.

The object of this maneuver on the part of complainants is strikingly clear.

THE COURT: Well, it is a maneuver on my part, as a matter of fact, Mr. Hamill.

MR. HAMILL: No, it cannot be a maneuver on your Honor's part. At least the purpose of it is, in the estimation of complainants, beneficial to them. They want to entice, if I might say, or persuade probably is a better word, your Honor into holding that because these men belong to a particular creed or to a particular party, they therefore could not be Communists.

In other words, that they would then, so they think, break down the defense of these defendants.

THE COURT: No, that——

MR. HAMILL: This subterfuge—may I finish—this subterfuge——

THE COURT: Well, don't use names.

MR. HAMILL: —deceives no one, although it does delude them.

THE COURT: I don't mind your finishing, but don't use words so harsh like subterfuge.

MR. HAMILL: May I make just this remark? I am nearly finished now. If that were so, then every Red in the country, by the simple trick of lifting his hand and protesting allegiance to a certain creed or party, could divest himself of any culpability for belonging to the Communist Party, and we might see Mr. Harry Bridges himself walking in here and doing that very same thing.

THE COURT: Just a minute. I am not trying to limit your proof, Mr. Hamill. All I am trying to find out is whether that is a defense. If it is a defense, like any other defense it should be met by proof.

MR. HAMILL: Your Honor, I——

THE COURT: I am not speaking loud enough?

MR. HAMILL: No, your Honor.

THE COURT: I say if it is a defense, it must be proved like any other defense, and if you think that a particular witness, when he says "I am a member of the Democratic Party," let's say, or let's say my own party, for the sake of argument, that he is not telling the truth, but that he is in fact a member of the Communist Party, why, then, of course, it would

have to be gone into by way of proof. I am not trying to confine your proof; all I am trying to find out is whether that is going to be a defense, and I am not even passing—naturally, it would be improper for me to pass on whether that is a good defense. I am just trying to find out whether it is a defense.

MR. HAMILL: It is a defense because there is a law in this state which covers the situation, and I call your Honor's attention to Chapter 133 of the Laws of 1902.

THE COURT: What does that say?

MR. HAMILL: A supplement to an act entitled "An Act for the Punishment of Crimes."

THE COURT: Is that a criminal syndicalism?

MR. HAMILL: Oh, yes, it is a criminal statute.

THE COURT: But is it similar to those criminal syndicalism acts?

MR. HAMILL: Well, I am not particularly familiar with the syndicalism acts, but I have——

THE COURT: Well, it forbids Communism or——

MR. HAMILL: Yes, it forbids it.

THE COURT: It forbids overthrowing the Government by force of violence, doesn't it?

MR. HAMILL: The Government of the State.

THE COURT: Well, it is the same as the Alien Act, the Immigration Act, isn't it? Let me see the terms of it.

MR. HAMILL: Shall I read it or hand it up?

THE COURT: Just hand it up and I will read it into the record.

(Handed to the Court.)

Well, may I read it, because I am familiar with it:

"Any person who shall, in public or private, by speech, writing, printing or by any other mode or means advocate the subversion or destruction by force of any and all government, or attempt by speech, writing, printing or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to any and all government, shall be guilty of a high misdemeanor . . ."

That language is practically the same as Section 137 of the United States Code Annotated, which prescribes the refusal to admit aliens who write, publish, or cause to be written or published, or who knowingly advocate or circulate, distribute, print or display, or knowingly cause to be circulated, distributed, printed, etc., any written or printed matter advising, advocating, or teaching opposition to all organized government.

It is the same wording practically.

Now, you say that is a defense, is that correct?

MR. HAMILL: I say that that will probably be a defense. We shall urge all defenses that we may legally urge.

THE COURT: Well, then, if that is a defense it seems to me that the questions that I asked the witnesses were relevant.

MR. HAMILL: That the questions what?

THE COURT: That I asked those witnesses, were relevant. You didn't feel like asking them on cross-examination. Now, you want me——

MR. HAMILL: Well, the Court, of course, I am reciting something very unnecessary by saying the Court has the right to ask any questions it wants. I have heard it said that you could object to a Court's question, but I never knew any lawyer who did it.

THE COURT: I have had it done.

MR. HAMILL: But we think that it is not relevant. Now, if the Court thinks it is relevant, of course the Court is directing the trial, but as I understood, someone wanted us to consent. We are not trying this case by consent; we are trying it under the direction of your Honor.

THE COURT: Well, I was only asking the question, Mr. Hamill, because otherwise, of course, you will have to recall all these persons and prove either through their mouths or in some other way that they have at some time violated this statute you just cited to me.

MR. HAMILL: Well, whatever we have to do we will do. We are ready to do it, or take the consequences of not doing it.

THE COURT: Well, it would seem a waste of time, but if that is the way you want to do it, all right. Go ahead.

MR. FRAZER: Mr. Sweeney.

JAMES P. SWEENEY, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

MR. HAMILL: May I have Mr. Sweeney's address?

THE WITNESS: 453 Mt. Prospect Avenue, Newark, New Jersey.

MR. FRAZER: Mr. Sweeney is a little deaf and I may have to speak somewhat loud.

THE COURT: All right.

Q. Mr. Sweeney, you are one of the plaintiffs in this action?

A. That's right.

Q. What is your business?

A. CIO organizer, Committee for Industrial Organization.

Q. And are you connected with any union?

A. Yes, sir.

Q. What?

A. The United Mine Workers of America, District No. 7, the anthracite region of Pennsylvania.

Q. You are now connected with the New Jersey office of the Committee of Industrial Organization?

A. That's correct.

Q. And how long have you been so connected?

A. From November 16, 1937.

Q. Were you engaged at all in organizing activities on the 29th of November, 1937?

A. Yes.

Q. Had you been engaged before that time?

A. Yes, sir.

Q. In this section?

A. At Buffalo, New York, and back in Pennsylvania.

Q. Well, when you came to Newark had you done any work in organizing prior to November 29?

A. Oh, yes. I was assigned to the CIO on the 22d of July, 1937, but previous to that in Crowl, Pennsylvania, District No. 7, of the United Mine Workers, Local 1537. I was president of the local, treasurer, vice-president, chairman of the mine committee, or grievance committee they call them, shop stewards around here, for sixteen years off and on.

Q. Now, coming down to November 29, 1937, will you state what occurred within your knowledge on that day.

A. Yes, I will. I arrived at Jersey City shortly after 6 A. M. on the morning of December 29, 1937, in company with Mr. Traynor and Mr. Holley. Mr. Traynor is a CIO field representative like myself; Mr. Holley is connected with the T. W. O. C., commonly known as Twoc, the Textile Workers Organizing Committee. The night before—I am getting ahead of my story. I met Mr. Macri, who was as-

sistant regional director to Brother William J. Carney, in the Hotel Douglas. At that time I didn't have my family here yet. We were both staying at the Hotel Douglas. And Macri said to me, "Mr. Sweeney, have you anything on for tomorrow?"

MR. HAMILL: No, I object.

THE COURT: Explain to him about the hearsay rule, will you, Dean?

A. (Continuing.) I said, "No." He said, "Well, how about going to Jersey City?"

MR. HAMILL: I object, I object.

THE WITNESS: Is the objection sustained, Judge?

THE COURT: Don't say what other people said to you.

MR. FRAZER: I think the Court should perhaps limit that instruction. If we are dealing with matters of res gestæ——

THE COURT: Yes.

MR. FRAZER: —I think that those may be said, and also where we are proving verbal facts, which it may become necessary to prove.

THE COURT: Yes.

MR. HAMILL: Well, it certainly is not part of the res gestæ——

THE COURT: No.

MR. HAMILL: The res gestæ is an act which is necessarily connected with another principal act, and which is uttered, the statement is uttered, under the influence of the principal act. It cannot be a mere recital of past events, and that's what this is.

MR. FRAZER: Now, I might say that the instructions of Mr. Macri in his capacity of regional director, assistant regional director, may be relevant as showing the mental condition of this witness. He is acting

under instructions, and it is only proper to let us know what those instructions were, as interpretive of his general action, and in that sense they do become part of the res gestæ.

Mr. Hamill: If he has done something wrong, the mere fact that somebody advised him, some organization, before he acted, that does not at all excuse him. He is not here to give us his mental condition; he is here to tell us what he did and what someone else did to him. He is a fact witness.

Mr. Frazer: Of course, the assumption, that he has done something wrong is purely gratuitous, but it may be that some of his statements or his actions were changed, in the light of the mental suggestion which had been given him. It might have a very grave relationship to the action.

Mr. Hamill: What someone else told him would be hearsay evidence, and if he is permitted to relate what someone else told him, why then this case is going to be tried by hearsay evidence and not by direct evidence. He is put on as a fact witness, to tell what he did.

The Court: Go ahead. Tell them what happened.

A. We went down to 76 Montgomery Street and we arrived in the hall on the third floor.

Q. All right.

A. The shoe workers organization, and there were about forty or fifty people, possibly, from different international unions and some lawyer connected with the Civil Liberties League and other organization sympathizers, and after some discussion we went out by twos, down toward the Harborside Building.

Q. What was the instructions which you received?

Mr. Hamill: I object.

The Court: I don't understand your point on that, Mr. Frazer. Is this one of the witnesses who distributed handbills?

MR. FRAZER: Yes.

THE COURT: I don't see why we should waste much time arguing on the technicalities of it.

MR. FRAZER: I want to give a complete picture as to what was urged.

THE COURT: He was told to distribute handbills, we all know that.

MR. FRAZER: Yes, but one of the defenses is that these people came in with the purpose of disorderly conduct and so on. It becomes very relevant as to what the instructions were as to the character of their activities.

MR. HAMILL: Then is he going to prove that he didn't commit disorderly conduct by telling what somebody else told him to do?

THE COURT: I have not yet understood that you can test this ordinance which is on the bill of complaint except in the manner it was tested. It seems it provides for no permit whatever. In fact I would say, in my legal opinion it does not apply to this situation. That is only my legal opinion.

MR. HAMILL: Then what is the purpose of the testimony of the witness?

THE COURT: Your complaint yesterday seemed to me, at least, that these people went there for the purpose of in some way violating the ordinance.

MR. HAMILL: And we will show by facts that that is what they did. We do not care who told them. We are not interested in whether somebody in an organization gave them instructions. That does not relieve them.

THE COURT: I think it would be conceded that they went there for the purpose of testing it. Now, if there were some more orderly way of testing it——

MR. HAMILL: All right, I will take your Honor's suggestion. If it be admitted that they went there to test this ordinance I will let in that hearsay evidence that they went there to tes this ordinance.

MR. FRAZER: They went there to establish the right to distribute——

MR. HAMILL: I know. Now, yes or no to my admission.

MR. FRAZER: Oh, no, no. I would not say yes or no to your questions, Mr. Hamill.

Q. Well, go on and state what happened, Mr. Sweeney, will you?

A. Well, the flying wedge of plain clothes men and uniformed men forced us in doorways, in hallways and any place they could.

Q. How many of them were in that flying wedge, as you call it?

A. You mean plain clothes men and policemen?

Q. Yes.

A. A much larger party than we had. I would say seventy-five to one hundred, and one of them hit me a sock on the short ribs and of course he took the literature off me.

Q. What did he do when he took the literature off you?

A. Snatched it right out of my hand and scratched my index finger on my left hand.

Q. Before he did that he struck you?

A. Yes, in the short ribs.

Q. And what did he do with the literature?

A. He stuck it in his pocket and herded me toward the ferry boat and I stepped on the ferry boat and got off on the other side and got a ride on a bus and since I would not pay my fare I was put off because I didn't want to go where they were sending me. I came back, in just a short time, two or three minutes, really got off and came right back.

In the meantime it showed me, it was obvious, the fact that these people didn't know——

MR. HAMILL: I object——

THE WITNESS: —and there were so many of them——

MR. HAMILL: I object. Let us know what he saw. We don't want his opinion, whether it was obvious or apparent or anything else.

A. One of these plain clothes men, who had two of our boys and the literature, he said, "Here, take one of them, take the literature off him." He took the boy. He said, "I am a CIO organizer, keep the literature." But then I was picked up and Brother Barry and I were taken and put under the charge of one plain clothes man and the man apparently in charge came up——

MR. HAMILL: I object to his opinion, what he apparently did. What did he do?

A. —came up and said——

MR. HAMILL: What did he do, to his visibility?

MR. FRAZER: Strike out the "apparently." Go ahead, a man in plain clothes——?

A. Came up and said to the man with us: "Which one did you get first?" and he pointed to Barry and he said, "Take him in. Let him go." Then we went back to the hall and had a fifteen or twenty minute discussion and we came out again and this second time I had no literature——

Q. Just before you go back there, as I understand you said when you first came there there was a flying wedge organized?

A. Yes.

Q. And you were pushed into a hallway and so on?

A. Yes.

Q. Did you say anything about a ferry boat?

A. Yes.

Q. What was that? I didn't get it.

A. I was put on a ferry boat but I walked off on the other side, not desiring to go to New York.

Q. Now you said then you went back to "76"?

A. Yes.

Q. Tell us what happened there.

A. Well, we discovered that four or five men, at least, were picked up, they were apparently——

MR. HAMILL: I object, that is evidently hearsay.

MR. FRAZER: His observation.

MR. HAMILL: Did you see them?

THE WITNESS: I said that they were not present, so there was nothing else left except that they were picked up.

MR. HAMILL: Then I object. That is evidently his conclusion. They were not there and he concludes that they were arrested.

THE COURT: I will strike it.

Q. They were not there in any event?

A. Well, we came back downstairs. I didn't have any literature and as we went into the revolving doors which was closed, closed by plain clothes policemen and some other people.

Someone suggested that we would have to go down the fire escape. I said "No, let's stay here until they let us out," and we decided on that course. And probably within five or ten minutes they began to let one at a time through the revolving doors, frisked us, searched us from head to foot, and put us in the private cars.

I was in one of these private cars along with two other fellows and two plain clothes men in front, and they were bringing us out in the sticks, somewhere——

Q. Who were the other fellows, do you remember?

A. Cronin and Silverman, Silverman from the United Shoe Workers, and Cronin I think was a worker there, I

am not sure of that. There were three cars. They stopped out there in front of us, with a like number of men from our volunteer ranks of organizers. We were all taken out of our cars and assembled there.

Then these people in plain clothes, the eight of them, went up front and had a conference at the first car and we stood there lighting a cigarette or a cigar, and then they came back and they ordered us in the cars. Number one car then—the first in line—starts off and it goes out of sight. Then in a minute number two car starts up and it goes out of sight. Another lapse of about the same interval and number three starts and goes out of sight.

We were sitting there and I said to the officer: "When do we start?" He said, "Get out," so they left us there. That was the idea, to separate us.

MR. HAMILL: I object "that was the idea."

MR. FRAZER: That was the effect, at least?

A. Yes, and us three, walked back up toward where we could get a bus or a car or something, and while we were there we were joined by three other fellows, Milt Irons, he was one of the fellows I knew out of the other three, and we walked along to where they said they could get a bus, me not being familiar with that part of the country, and we heard this horn blown at the intersection. We turned around and there was a police car with two uniformed men in it, a radio car, and we glanced over our shoulders and we kept slowly walking in the same direction we were going, and we see them stop a man who apparently had his lunch under his arm, a man not connected with our organization in any way. None of them seemed to know him, and they had him open his lunch and they left him go in time——

MR. HAMILL: I object. He didn't see what was in there.

A. When it opened, then I did see it. I seen an apple and a sandwich drop out.

MR. HAMILL: All right. You are doing a little better as you go on.

A. I will make it very explicit for you in the future. So these two fellows pulled up beside us and they stepped out and one fellow went over to the other four or five and he left me standing there for a while, without frisking me. And I said, "Officer, what are you detaining us for?" He said, "Suspicious characters." He said, "I didn't frisk you." He frisked me and we stood there a little more and while we were standing there a funny incident occurred. A young kid about eighteen came along the street and seen the police car and four or five men——

MR. HAMILL: I object to that, irrelevant.

MR. FRAZER: It is part of the picture.

MR. HAMILL: It certainly is not very probative.

THE COURT: Has it anything to do with the organization?

MR. HAMILL: We don't want amusing incidents.

A. It was a little humor in a tense situation, since we didn't know what might occur, Judge.

MR. HAMILL: This gentleman is evidently a romancer and all we want is——

A. I like flowers and beautiful women and things like that. If you call that being a romancer, I am.

MR. HAMILL: And I would like to have him stick——

THE WITNESS: Somebody might as well have a little color in here as well as you.

MR. HAMILL: And you want to get part of the show, you want to testify?

THE WITNESS: I don't want no show, I want to tell the facts.

THE COURT: Let me supply the humor, please.

MR. FRAZER: This is a picture of police activities, and even though parts of it be humorous, there is no reason why it should not be told in order to have the complete picture.

MR. HAMILL: Then let him tell it.

MR. FRAZER: If Mr. Hamill does not interrupt, he can tell it very briefly.

THE WITNESS: Well, you see, the eighteen-year-old stuck his head in——

MR. HAMILL: I object to what the eighteen-year-old boy stuck his head in and did. I know——

Q. What did the eighteen-year-old boy do?

A. Well, he didn't do anything except stick his head in there and one of the cops said, "What do you want?"

MR. HAMILL: I object.

A. —"I want a job, can you give it to me?"

MR. HAMILL: I object to this hearsay evidence.

THE COURT: Strike it out.

Q. Go on, what happened after that?

A. Then I went back to Jersey City, to the shoe workers headquarters and there was nothing doing then and——

Q. Did these officers do anything to you further than what you said?

A. No, they just ordered us to go back out of Jersey City.

Q. How did you get back?

A. Well, I went back. Milt Irons said his car was there right off 76 Montgomery Street on a side street, going east, I think, and he had some material there and I had a hat there——

Q. I mean from the time you were outside Jersey City and you were coming back. How did you get back to 76 Montgomery Street?

A. On a bus. Then we paid our fare there. We were not forced on that, and as I say I had a hat there and he had his brief case or something, and we went down to his car and came back to Newark.

Q. Now, did you attend a meeting of the so-called veterans in the Jersey City Armory on December 28th?

A. That is correct.

Q. Are you yourself a veteran?

A. Yes, I am a member of the American Legion, Post 170, Gewshi-Shubeck. That name is taken from two fellows who were killed in France.

MR. HAMILL: I object "two fellows who were killed in France." That is no part of the case.

MR. FRAZER: Strike it out. I have no objection.

MR. HAMILL: There were a number of such good men met an unfortunate fate, but it is not relevant to this testimony.

A. I just said the reason the post was named after them.

MR. FRAZER: Are you finished your remarks, Mr. Hamill?

MR. HAMILL: Yes.

Q. Now, Mr. Sweeney, will you tell us the circumstances of the so-called veterans' meeting in Jersey City on December 28th, so far as you observed?

A. At this so-called veterans' meeting, which was held in a basement, I think——

MR. HAMILL: I move to strike it out, what happened at the "so-called veterans' meeting." We are not asking him for a characterization. His prejudice is obvious.

THE COURT: Strike it.

MR. FRAZER: It was "so-called."

MR. HAMILL: There was a veterans' meeting. It was not a "so-called veterans' meeting."

MR. FRAZER: We do not concede it was a veterans' meeting. There were some veterans there.

MR. HAMILL: Then get your question. Have it read. It was "did you attend a veterans' meeting." It was you who said it.

Q. Did you attend a veterans' meeting——

MR. HAMILL: Let the stenographer read the question. You said: "Did you attend a veterans' meeting."

MR. FRAZER: Well, I think we have identified the meeting sufficiently.

Q. Tell us what you saw at that particular meeting.

A. Well, before going into the meeting I had taken my American Legion pin off——

MR HAMILL: I object. He was asked what happened at the meeting.

A. Well I walked in without being asked for my identification or my legion button or to show my paid-up legion card. I was handed a white silk ribbon which I think Mr. Ernst has, which was about five by four inches, with black letters "Jersey City War Veterans." I sat in the second seat off to the left of the speakers, Hugh Kelly, Mr. Rooney and several others and the only man I knew was a man I frequently met at conventions, McKenna, who was the national committeeman. I asked him when did he see James Carroll——

MR. HAMILL: I object to what he asked him.

A. But anyhow I observed the meeting and they had two girls and a fellow who were entertaining, so far as I understood they came from Roxy's Theatre.

MR. HAMILL: I object—"as far as he understands."

Q. Were they announced as coming from Roxy's Theatre?

A. They came from Roxy's Theatre——

MR. HAMILL: If we can restrain the enthusiasm of this witness possibly we can get some of the testimony on the record.

THE COURT: Go ahead.

A. They were introduced as actors and actresses from the Roxy Theatre.

MR. HAMILL: I object.

THE COURT: I don't see what that has to do with it.

MR. FRAZER: I am trying to get the picture of the so-called veterans' meeting.

A. After the meeting was concluded, approximately two hours, I left the meeting and when I finally got clear of the crowd——

Q. What happened at the meeting itself?

A. Well, they passed different resolutions.

Q. Will you tell us how they were passed?

A. With lots of enthusiasm, the Irish war veterans said they——

MR. HAMILL: I object.

A. —that they would go to any means to keep these Reds out——

MR. HAMILL: I object and ask your Honor to instruct the witness to answer the questions without rambling all over with his ruminations and reflections and cogitations and comments on everything that happened.

MR. FRAZER: Mr. Sweeney is not a skilled litterateur like Mr. Hamill. He is telling in his own simple way what happened. He may ramble at different times.

MR. HAMILL: Well, we know of his discoursiveness, which is against the rules of evidence. If he would an-

swer the simple question this case could be tried far more expeditiously.

THE WITNESS: I have not been prompted, and thanks to you you have not told me that I am an intelligent witness, like you told other previous witnesses.

MR. HAMILL: I move to strike that out and ask that the Court instruct the witness to behave himself on the stand.

Q. Now, will you please tell us, Mr. Sweeney, what was said, so far as you recall it, when resolutions were presented at the meeting, and how they were presented?

A. Mr. Kelly——

MR. HAMILL: I object on the ground it is irrelevant. What difference does it make whether they were presented on way or another. He can tell what happened.

THE COURT: Yes, tell what happened.

A. Well, the resolutions were presented and they went over unanimously. The organization was the same as that at Johnstown, Pennsylvania——

MR. HAMILL: I object. We don't want the embellishment.

A. Then I left the meeting and when I got clear of the crowd——

Q. One moment. Were those resolutions prepared in advance? Did they come——

MR. HAMILL: Now, I object to that.

A. Prepared in advance.

MR. HERSHENSTEIN: Just a minute——

MR. HAMILL: I object. If there is any more flagrant example of a leading question than that, I would like to know it. Counsel is not eliciting information from the witness. He is giving information to the witness.

THE COURT: Have you got the resolutions?

MR. FRAZER: Yes, sir, I think so.

THE COURT: Are they attached to the bill?

MR. FRAZER: Attached to the denial of the application for a permit to speak, to hold an open-air meeting.

MR. HAMILL: That is very different from asking the witness, who evidently knows nothing about it.

Q. I show you copy of a resolution which is attached to the bill of complaint, and ask you to examine that, Mr. Sweeney, and tell me whether that was the resolution which was offered at that meeting? (Handing paper to witness.)

MR. HAMILL: Now, before he does that may I inquire on the resolution?

A. Incidentally——

MR. HAMILL: Give me the paper.

THE WITNESS: No, he gave it to me.

(Mr. Hamill takes paper.)

MR. HAMILL: Your Honor, I ask you to instruct this man to behave himself.

THE COURT: Give Mr. Hamill the paper.

THE WITNESS: It was presented to me, Judge.

MR. HAMILL: He imagines he can be a bit fresh on the witness stand. We are trying this case like gentlemen——

THE WITNESS: I was handed something by my attorney. My attorney gave it to me.

THE COURT: Examine on the resolution, Mr. Hamill.

By MR. HAMILL:

Q. When did you first see this resolution?

A. I didn't see the resolution——

MR. FRAZER: I asked him to identify it, that is all.

THE WITNESS: They had three photostatic copies of the——

MR. HAMILL: Will you subside for a minute——

THE COURT: I don't think he hears half you say, Mr. Hamill.

MR. HAMILL: I see. We will get in an acre lot then so that we can interrogate him.

First I object on the ground that this testimony is irrelevant. What difference does it make what the veterans did or what anybody else did? How does that affect these defendants?

THE COURT: It does not seem to me, Dean Frazer, that that is a matter that has to do with the granting of permits. I didn't understand that the action of these veterans would be in the defense——

MR. FRAZER: No, sir, we are charging that there were permits for open meetings denied us. The denial was based upon allegations of actions at veterans' meetings, actions which indicated to the public authorities——

THE COURT: Well, isn't that a matter of defense?

MR. FRAZER: No, I think not. I think it is a matter of proof of our denial of substantive rights.

THE COURT: Unless they have reason for denying the permit; then, of course, you shouldn't have it. Now, as I understand it, their reason is that the veterans passed these resolutions——

MR. FRAZER: Yes, sir.

THE COURT: —or at least one reason. That's correct? Therefore it seems to me a matter of rebuttal to their defense. If you think that the veterans' resolu-

tions were stimulated by other sources, that would be a matter of rebuttal to the defense.

MR. FRAZER: I think not; inasmuch as the very denial which we are complaining about was accompanied with statements of what occurred at veterans' meetings. We expect as a part of our case to prove that these veterans' meetings were fomented, that they were not spontaneous.

THE COURT: That may be so. But I think it is a matter of rebuttal. I will rule against it at this time.

MR. FRAZER: May I have an exception?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

By MR. FRAZER:

Q. Now, as you left the hall did anything happen to you?

A. Yes, when I got about 15 feet away from the crowd that were standing and greeting one another, and lighting up cigarettes and cigars, two men came alongside of me, one on each side, right and left, and said——

MR. HAMILL: I object to what they said.

A. (Continuing.) ——"Don't start anything. We are taking you"——

MR. HAMILL: I ask your Honor to instruct——

THE COURT: He doesn't hear you, Mr. Hamill, I don't think.

MR. FRAZER: These are policemen he is testifying about now, what happened to him——

MR. HAMILL: How do we know whether they are or not.

THE WITNESS: They afterward identified themselves as such.

MR. FRAZER: He has just said so.

A. (Continuing.) These two gentlemen identified themselves to my satisfaction, and I went to the police station across Montgomery Street in the first block off Bergen on the left-hand side. There were several men in there. One of these fellows who was in the police car out at Harrison on Noevmber 29th was there, and he told the man who was sitting behind the desk——

MR. HAMILL: I object to that.

MR. FRAZER: This is part——

THE COURT: I don't know how much he hears, Dean Frazer, but tell him not to testify to what other people say. I am not going to permit it.

MR. FRAZER: This was in the police station.

THE COURT: What?

MR. FRAZER: The police are directly charged with complicity in the whole affair. This was in the police station, where, without charge, he was taken, and I wish now——

THE COURT: We don't even know that. He hasn't told us what he was doing in the police station.

MR. FRAZER: I understood him to say, sir, that he was taken by two men, one on either side, as he was a few away from the entrance, and that they took him to the Montgomery Street police station—was it?

THE WITNESS: I said they identified themselves to my satisfaction as policemen.

MR. HAMILL: Well, if you say it, Dean Frazer, all right then. Let that be his testimony. That is the easiest way out of it.

THE WITNESS: I did, sir. Didn't you get that?

MR. HAMILL: Now we have him in the police station.

MR. FRAZER: He is now in the police station, having been arrested by two persons who identified themselves as policemen.

MR. HAMILL: All right. Now, is there anything else?

MR. FRAZER: Yes. Then in addition he stated just now that when he was there he recognized one of the men who had been in the police car which had taken him to Harrison on November 29, he said, at five o'clock.

MR. HAMILL: All right. Let that go in as his testimony. That is his testimony.

MR. FRAZER: Now, he is about to say what happened to him with the police in the police station.

MR. HAMILL: Now, would you like to testify to that?

MR. FRAZER: No. No, I haven't heard that yet.

THE WITNESS: He ain't putting words in my mouth.

MR. HAMILL: I want to be complaisant to the fullest limits.

MR. FRAZER: I am waiting now to hear what he has to say.

A. The fellow back of the desk said, "What's the charge?" He said, "Well, he was disturbing a meeting by giving the Bronx cheer"; and he said——

MR. HAMILL: If your Honor please, may I make another remark? Suppose this meeting were engineered, fomented, or whatever the Dean called it——

MR. FRAZER: "Fomented" was my word.

MR. HAMILL: —and worse; suppose all of those things happened. How would that have any effect on these defendants unless you would show that they fomented it? Are they going to show that?

THE COURT: Well, I think, Dean Frazer, this is rebuttal to some defense that you think they may make. I think it is out of order. It is a matter of proof.

MR. FRAZER: Well, it seems to me, your Honor——

THE COURT: Maybe that defense won't be made, I don't know.

MR. FRAZER: If we wish to anticipate rebuttal, it may be very foolish on our part——

THE COURT: I don't think it is proper because that defense may never be made. I don't know.

MR. HAMILL: Here is what I wanted to say to your Honor. Say I am Director of Public Safety of Newark and an application is made for a permit, and they tell me that a lot of meetings have been gotten up, or rather a lot of meetings have been held, and these resolutions passed, and I say in my judgment this meeting, taking those meetings as an indication of the temper of the people, would lead to riot and disorder, and in the interest of public safety and public peace, I shall deny it. Now,——

THE COURT: Yes, but supposing you arranged the meetings, to put an extreme case; you can hardly——

MR. HAMILL: Then, of course, it would be false; it would be false; and it would be proof that I did not use my discretion honestly.

THE COURT: Yes. Well, I think this is rebuttal to a defense that has not yet been made.

MR. FRAZER: May I respectfully submit to your Honor that everything which I am now trying to prove is part of the allegations of the bill of complaint. We are proving merely the facts which we have alleged, and which I take it is the orderly way to proceed in a suit in equity, to show everything that we know about the case, and then allow them to come in with their answer and defense, and if there be any matters which have not been opened, then we have a right to go on in rebuttal, but there is not a single question which I have addressed to this witness which is not relevant to some charge in the bill, and these very resolutions under discussion are attached to the bill as a part of our direct alleged case.

THE COURT: I thought you alleged some of their defenses in their bill for the purpose of rebutting them. I didn't think that was proper pleading at the time.

I will deal with the veterans' question if it is offered as a defense, not before.

By MR. FRAZER:

Q. Well, now, will you state what happened to you, what the conversation at the police court was when you were arrested?

A. Well, he went on to tell——

Q. Or the police station, I mean.

A. —to tell this man behind the desk whom I didn't know that I disturbed the meeting and gave them the Bronx cheer, and I took notes of the meeting, which I did. I have notes from every outside State meeting I attended, or convention, at my home. And he said general disorderly conduct, and the Judge asked me was I Legionnaire. I said yes, and I showed him my card, and that satisfied him. This officer went to take the notes out of my pocket, and I handed them over to the Judge, who gave them the once over and handed them back and said, "There is nothing in them to incriminate us in any way," and he said, "The case

is dismissed." Then I was left go, and these same plain clothes men followed me on my walk up to Journal Square, until I got in the tubes.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR HAMILL:

Q. So that you were brought to the police station and when the Judge heard the case and heard the circumstances, he dismissed you?

A. That's correct.

Q. All right. And you went to the veterans' meeting and the sum total of the knowledge you obtained there was that the veterans unanimously passed resolutions; is that right?

A. A rabble-raising, yes.

Q. Sir?

A. A rabble-raising. They passed them under pressure.

Q. They passed them under what?

A. It was fomented by these leaders.

Q. I see. How do you know that?

A. Well, I could see. I know how they incite a mob and how they incite people at conventions to pass resolutions.

Q. Well, you never incited a mob or a convention to pass resolutions, did you?

A. No, I never incited a mob or convention to pass anything?

Q. Did you ever incite a mob?

A. No, but I have seen other people do it.

Q. Well, were those people who incited mobs friends of yours?

A. No.

Q. They were all enemies? You never incited a mob in retaliation, did you?

A. No, because I was always in the minority, and I wouldn't do it anyway, whether I was in the majority or the minority. I believe in democratic rule.

Q. Yes. And you judged that they were fomented from the fact that you had experience in what you thought similar situations, is that right?

A. Yes.

Q. You didn't take any part in fomenting it, did you?

A. No.

Q. No. You went there to act as an observer of what was going on?

A. I am interested in veterans' legislation, and I thought perhaps there might be something of benefit to the veteran and the widow and the orphan that might transpire there, and I was amazed at what did transpire.

Q. Well, did you suggest anything at the meeting for the benefit of the widow and orphan?

A. Why, I would have been completely out of order. It was not called for that purpose.

Q. Well, did you try? Did you make the motion?

A. No. I would be declared out of order, because it was a special meeting called to deny this permit to Roger Baldwin.

Q. Well, now, do you think an eloquent and fluent man like you could not rise up and suggest something for the widow and the orphan of the veteran, if you went there for that purpose?

A. Well, if I had any education at all, like you give me credit for, thanks for that, I wouldn't get up and talk in a special meeting that wasn't called for that purpose. I would be out of order. I know that much about parliamentary procedure.

Q. It was called for a special purpose, wasn't it?

A. Yes.

Q. Then what made you think, what made you believe, when you went there, that you might find something for the benefit of the widow and the orphan?

A. I didn't know when I went in there what might transpire until after I got in and seen the thing going the way it went and heard it.

Q. And where did you come from to go to that meeting?

A. From Newark.

Q. Who told you to go to the meeting?

A. I happened to be in New York that day on a Labor Board case, and when I was going into Cortlandt Street station I picked up one of the Jersey papers and seen the meeting advertised.

Q. And that's what brought you there?

A. Yes; a news item in the paper, not an advertisement.

Q. Do you go to all veterans' meetings?

A. Usually, if I have time, yes.

Q. And you didn't go for any other purpose except to see if something was done for the widow and the orphan?

A. Oh, to see if something of benefit to the veteran in general.

Q. Yes.

A. And the comradeship that you get among veterans, that you usually get, that ain't true in the other fraternal organizations.

Q. Now, when did you first come to Jersey City? I think you said November 16, didn't you, 1937?

A. Yes.

Q. And what is your position now?

A. CIO field representative.

Q. A CIO field representative?

A. Correct.

Q. And who sent you here to Jersey City?

A. Walter Smithers, the assistant executive to the assistant chairman to John L. Lewis.

Q. And were you sent for any particular purpose?

A. May I tell you why I was sent?

Q. Yes, go ahead.

A. The regional director and I had there a dispute about me going back home to Pennsylvania to do some electioneering in the campaign last fall.

Q. I wish you would make it short, because I don't want you to take advantage of the permission I gave you.

A. All right, that's all. That is what I tell you; and I went home without his permission, and of course, naturally, him and I had an argument, and for the betterment of the organization they transferred me down to New Jersey.

Q. All right, Mr. Sweeney, that's all. You are still connected with the CIO?

A. Yes, sir.

MR. HAMILL: All right.

MR. FRAZER: Miss Cox.

NANCY COX, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Miss Cox,——

MR. HAMILL: Now, may I get the young lady's name, Dean? If you have it give it to me, please.

MR. FRAZER: Nancy Cox.

MR. HAMILL: And what address, please?

Q. What is your address?

THE WITNESS: If your Honor please, I would like to be excused from giving my address at the present time. I am afraid of having it made known public because of recent happenings.

MR. HAMILL: I can't hear you, Miss Cox. Do you mind speaking a little louder, please?

THE WITNESS: I was asking if I might be excused from answering that publicly. I am afraid to have the address made known public because of recent happenings.

MR. HAMILL: Well, all right, if you don't care to give it on the witness stand I shall not insist on it.

THE WITNESS: I will gladly give it to you privately.

MR. HAMILL: You can give it afterwards to the——

THE COURT: Stenographer.

MR. HAMILL: —court stenographer.

THE WITNESS: I will.

MR. HAMILL: All right.

Q. On November 29, 1937, were you associated with any particular organization?

A. I was at that time associated with the New Jersey Civil Liberties Union as executive secretary.

Q. By way of identification, Miss Cox, you are the Nancy Cox who was the prosecctor of the certiorari in an ordinance distribution case which occurred in the Borough of Edgewater, I think?

A. I was.

THE COURT: Are you a graduate of any college, Miss Cox?

THE WITNESS: I am a graduate of New York University.

Q. Now, as a member of the Civil Liberties Union did you do anything on the 29th of November, 1937?

A. Yes.

Q. And will you briefly state what that was?

A. I acted as an observer in the attempted leaflet distribution in Jersey City by the CIO organizers.

Q. Will you state what you did and what you saw on that occasion?

A. I will. I went over very early in the morning, about between six and six-thirty, to the office at 76 Montgomery Street where the organizers were meeting. There I saw the circulars which they were going to hand out, calling

for a meeting, and I saw several organizers prepared to go out to hand out the leaflets. After they received their instructions to leave the office and go downstairs and go to what is called the Harborside Building, I followed after but kept some distance away from the distributors so as not to be confused with them.

Q. Did you have any circulars yourself?

A. I did not. I was acting merely as an observer. I followed them along, I followed alongside of them as they went down the street, quietly, and noticed that as soon as we had left the door, several men in plain clothes, joined us. There were great numbers of police around, uniformed police, and radio cars on every corner. We went down together toward the Harborside Building, and as soon as we got near there, there was a large group of plain clothes men together with some officers who rushed into the CIO organizers, who were going to try to hand out leaflets to the workers coming to the Harborside Building. These men as they rushed into the group of CIO organizers knocked the men off their balance, took leaflets from their hands, and pushed anyone who was nearby, in order to crowd these men all together. The men themselves were helpless. Some were shoved off to the ferry, numbers were pushed on to the bus, and others were just crowded together so that they couldn't move. I, myself, was pushed up into a doorway where I stepped further away to stay out of any trouble. I later went out into the street when I saw that some of the organizers had been taken away and was talking with two other observers about what we had seen. At that moment, without any provocation, a man in a polo coat, one of the ones whom I had recognized before as being with the group of plain clothes men, grabbed the leaflets out of the hand of a man who had just picked one up from the ground to put it into his pocket, and punched my other companion, Robert Parker, in the abdomen. We were quite shaken by this and after we had seen that several of the organizers had been taken away, we decided

to go back to the meeting hall to make up our mind as to what the further plans of the group would be. Back there it was noticed that the leaders of the CIO organizers were missing. I had seen several of these held by plain clothes men and some put aboard the bus. During the meeting in the room upstairs plans were made to go out of the building and try to find what happened to these men who had disappeared. We went downstairs and found out that the rotating door, revolving door, was being guarded outside by plain clothes men and by officers. We couldn't get out. We tried to get out the back door. We thought of going out the fire escape, but there were several policemen back there and we thought that we might be stopped for entering a building instead of exiting from one, and decided to wait until whatever happened did happen. Finally the door was moved and we were let out one by one. As we went out we were searched. The majority of the persons going out of the door were put into cars waiting for the purpose of receiving them as they came out. For some reason or other I was not put into a car, as were two or three other persons there. We decided to go up to the police station to find if we could discover the whereabouts of the persons who had been picked up at the Harborside Building. Upon going up there I was refused admittance to the station. I identified myself as an official of the Civil Liberties Union, said that I had heard——

MR. HAMILL: Of what union, may I ask?

THE WITNESS: The Civil Liberties, the New Jersey Civil Liberties Union; that is not a union organization, a workers organization.

A. (Continuing.) I told them that I understood that several——

MR. HAMILL: Now, please, Miss Cox. You can't tell us——

MR. FRAZER: This is to the police.

THE WITNESS: This is what I told the policeman at the door of the police station.

MR. HAMILL: All right, go ahead.

A. (Continuing.) I told him that I had seen that several persons distributing literature had been taken away from the scene, and that I understood they were to be taken to this station on Montgomery Street. He said that no persons had been there this morning, that nothing had happened to his knowledge, and also that nobody was to be allowed admittance to the police station. I stayed around realizing that it was important to find out what had happened to these persons. Some time later Chief of Police Walsh came downstairs. I told him who I was and he said, "Oh, we will let anyone in from the Civil Liberties Union. We have no fear of them." I walked in, found out that they had no one booked for any charge for anything that had happened that morning. They claimed that they had none of our people there. Just then I stepped into the hall and two observers who had been on the scene of the distribution were being pushed out of the police station by two officers. I asked them where they were going and thy said they had no idea. After waiting around some time, Mrs. Milgrim came in and asked the man behind the desk if her husband had been booked on any charge. Finally this man behind the desk, I don't know what his position was, said that Mr. Milgrim had been booked, so that we knew that the rest of the people must be there. Finally they admitted that there was to be a trial that day. We attended the trial also as observers. Several of the men who had been at the Harborside Building were brought in and tried and several who had distributed at another place, the A. B. See Elevators, I believe, were also on trial.

Should I describe the trial, Mr. Frazer?

Q. Yes, please.

A. Judge Botti was presiding, was judge at the trial, and Mr. Kapelsohn was defending the organizers who had

distributed leaflets. Some of the men were charged with having violated the ordinance——

MR. HAMILL: Well, I want to make this suggestion. Of course I don't mind her describing the court room, but I don't want the witness to testify to anything that ought to be proved by records.

THE COURT: Is that record here now?

MR. HAMILL: That is my only point.

MR. FRAZER: Have you the record, Mr. Stoffer? We have the record here but we had intended to call the stenographer who took it.

THE COURT: Well, I am sure Mr. Hamill—look at it, Mr. Hamill, will you?

MR. HAMILL: We will not let that whole record go in. Was this a stenographer appointed by the court?

MR. FRAZER: No, it was the stenographer that was offered but whom the Court refused to swear.

MR. HAMILL: Well, then, the fact is that they are nothing more—this is nothing more than memoranda made by an observer. Isn't that what it amounts to? It is memoranda made by an observer who happens to be a stenographer and can take the notes down in shorthand.

THE COURT: Well, Mr. Hamill, I don't want to seem critical, but surely no court in the world is entitled to refuse a stenographic record. It is a novel thing if any court does refuse it.

MR. HAMILL: Suppose any one of us at counsel table made a stenographic report of this trial?

THE COURT: Well, no, that is not quite the case. If you got up and said, "Judge Clark, I wish an official stenographer" and I denied your request, which

I can't even conceive of my doing, or of any judge doing, then you would have the issue which appears to be the issue here, and I don't want to say that it is.

MR. HAMILL: No, I want to talk the matter over calmly, legally, with your Honor.

THE COURT: I don't want to criticise someone who is not here, in the first place, because that would not be fair.

MR. HAMILL: No.

THE COURT: I mean I never allow a single word to be said in my court without its being written down. I think that is a fundamental.

MR. HAMILL: Under the Police Court Act, a stenographer is appointed by the police judge for either one of the parties on request. Now this stenographer was refused the right to act as official stenographer. I don't know why. If your Honor holds that the Court did not have any right to do that, I suggest respectfully that there isn't any evidence. There may have been a reason for doing it, I don't know. The idea of the other side probably would be that it was capricious on the part of the Judge, but no court will hold that. Now, it was not an official——

THE COURT: I mean I don't want to criticise some other judge or someone who is not here, but I can't conceive of not having a stenographic record.

MR. HAMILL: May I say this to your Honor? Mr. Frazer said this is the stenographer who was offered and refused. We haven't any evidence of that.

THE COURT: No. Let me see that record, will you? I thought yesterday——

MR. HAMILL: Mr. Hershenstein, who seems to know —do you know something about it?

MR. HERSHENSTEIN: Yes, I understand that Judge Botti appointed an official stenographer.

MR. HAMILL: Well, tell the Court then——

THE COURT: I don't want to criticise the Judge.

MR. HAMILL: He said that there was an official stenographer appointed.

THE COURT: It is not fair to say it.

MR. HAMILL: That there was an official stenographer appointed at that trial.

MR. FRAZER: I understand, Mr. Hamill that this——

MR. HAMILL: I don't know. I wasn't at the trial.

MR. FRAZER: I understand that this is the record that was used before the Supreme Court of New Jersey on application for a writ of certiorari to review the convictions.

MR. HAMILL: Well, if this is that record, Dean Frazer, of course I have no objection—if this satisfies the Supreme Court it ought to satisfy the corporation counsel.

THE COURT: Well, will you look at it, Mr. Hershenstein, and see if it is the record?

MR. HERSHENSTEIN: We didn't take any part in that case, we don't know. That is a different case you are talking about.

MR. FRAZER: Is Mr. Rothbard here in court?

MR. ROTHBARD: That is the record.

MR. HAMILL: Who took that, Mr. Rothbard?

MR. ROTHBARD: Mr. Winard.

MR. HAMILL: Was that used before the Supreme Court?

MR. ROTHBARD: Yes, it is a copy of what was used before the Supreme Court.

MR. HAMILL: Is it? All right, all right.

THE COURT: I mean I don't want it to appear that the judge——

MR. HAMILL: No, no.

THE COURT: —refused a record, unless I know that. So I don't want any newspaper to say that he did, unless we know it.

MR. HAMILL: I want to know, of course, what it is, naturally, before it goes in. I want to be informed. Now if Mr. Rothbard says that record was used before the Supreme Court, all right.

THE COURT: Wait a minute. I will see if I—just a minute. Let me see if I can tell from the record. Give me the first page of that record, will you?

MR. HAMILL: Now, the whole record, I understand, is not going in and it cannot go in, and those parts of it which they consider relevant cannot go in, until they point out what is relevant. The can't take a whole book and hand it in and say "We present this."

THE COURT: What a minute. I think the first page will tell us. Wait a minute. I will read what it says:

"THE COURT: I will decline to permit him to be sworn. As I understand it, when he is sworn, the court selects this court stenographer, and I don't choose so to do."

Then the attorney asks that there be no proceedings until there is a stenographer. Then the court says:

"I will permit the stenographer to take the testimony, but not sworn. You may either accept that proposition or not, as you choose."

"THE COURT: Let me decide one motion now. You have made two, as I understand it; one is that you want the stenographer sworn."

ATTORNEY: "That is right."

"THE COURT: All right. I refuse to do that and I will allow you an exception."

Well, that seems to have been what happened.

MR. HAMILL: Well, I mean whatever we may think of that, we have no way to——

THE COURT: I am not going to pass on that. I just wanted to know whether——

MR. HAMILL: Your Honor is not going to pass on that?

THE COURT: —that is satisfactory to you as the record.

MR. HAMILL: As a matter of fact, that being, as I understand, the subject now of a certiorari proceeding——

THE COURT: Yes, yes.

MR. FRAZER: I will offer the record, sir.

MR. HAMILL: Sir?

MR. FRAZER: I offer the record.

MR. HAMILL: I object to it unless it is pointed out what parts of it are relevant. You can't take a book of 137 pages and throw it in and say "I offer that." What parts of it are relevant?

MR. FRAZER: Some time ago Mr. Hamill, when I was speaking to prove the occurrences in court, insisted that I should produce the record.

MR. HAMILL: Yes.

MR. FRAZER: And that was the evidence of what happened. I now produce the record, and he says he objects to the record, so I don't know what my proof should be.

MR. HAMILL: I object on the ground that the counsel must tell us what parts of this record. Now, may I ask counsel, did you ever read this record?

MR. FRAZER: I have not, sir.

MR. HAMILL: And yet you impliedly vouch for it by saying or by offering it; you are vouching to the Court, therefore, that it is relevant testimony. Now, you don't mean to do that.

THE COURT: I will allow it subject to a motion to strike out on your part such parts of it as you deem irrelevant.

MR. HAMILL: Well, but that is equivalent to a man putting in any testimony he wants and putting on the other man——

THE COURT: No.

MR. HAMILL: —the duty to pick out the bad parts of it.

THE COURT: No.

MR. HAMILL: It is his duty to put in the good parts of it.

MR. FRAZER: Well, the relevant portion, I should say, related to the conduct of Judge Botti, our bill alleging that part of the general plan consisted in using the judiciary.

MR. HAMILL: Well, now, what parts of it—have you finished, Mr. Frazer?

MR. FRAZER: Judge Botti's conduct in the trial I consider as wholly relevant.

MR. HAMILL: First of all, we object to anything that would reflect on a Judge of a court of record. The police court in Jersey City is a court of record.

THE COURT: I will allow that subject to your motion to strike out such portions as you think irrelevant.

MR. HAMILL: Now, may I ask this? Will Mr. Frazer inform the Court and counsel so we can cross-examine just what parts of this record are relevant to the conduct of Judge Botti?

MR. FRAZER: I don't know how you are going to cross-examine on the record. I am quite frank to say that. It is an exhibit. If you wish me to produce the stenographer, you can cross-examine the stenographer if you want to.

MR. HAMILL: No, I may cross-examine someone who was there.

MR. FRAZER: I am offering it as a series of verbal facts of what happened and what was said.

MR. HAMILL: But doesn't that——

MR. FRAZER: Now, if you wish to examine the man who took the record, I will be glad to produce him.

THE COURT: No, I understand Mr. Hamill does not deny—you don't deny its authenticity, do you?

MR. HAMILL: No, I am not denying its authenticity.

Now, my point is this, that this whole record of 127 pages is not a record of the conduct of Judge Botti: it is the record of a trial in which certain portions, they say, show the conduct of Judge Botti, for those are the only parts that are relevant.

THE COURT: No, I understood yesterday it was being offered to show what happened at the trial, irrespective of what the Judge did or did not do.

MR. HAMILL: If you were putting in a man's address and said he was in the city directory, you wouldn't put in the whole city directory; you would show just that part of it which stated his address.

MR. FRAZER: No, I would put in the whole city directory to show that it was in the city directory; then you could read that portion of it which consisted of his name and address.

MR. HAMILL: In other words, you would dump the whole city directory in.

MR. FRAZER: If I attempted to do it without putting in the whole directory, you would not admit it.

MR. HAMILL: Well, you would act very illegally if you did it, and you know it.

MR. FRAZER: I offer it.

MR. HAMILL: May I ask this? What is he trying to prove against or for Judge Botti, whichever it is, by means of this record?

THE COURT: Well, I didn't understand yesterday that it had anything to——

MR. HAMILL: What part of the bill of complaint is it that reflects on Judge Botti? We can't find it. And what is it he wants to prove by Judge Botti?

THE COURT: Wait a minute, Mr. Hamill. I didn't understand yesterday that it was being offered with respect to any Judge, Botti or otherwise.

MR. HAMILL: Neither did I, but he has just told us.

THE COURT: I understood yesterday it was being offered because you thought, and I think properly thought, that whatever the circumstances of the trial were, they should be related from the record. Now, there is the record.

MR. HAMILL: And he has put in the whole record. He tells us he wants to show the conduct of Judge Botti.

THE COURT: I am not a jury, so I won't be prejudiced by other parts of the record. So I will adhere to my ruling.

MR. HAMILL: I know, your Honor, but there is this: that in case this record has to be printed, we should not be put to the expense of printing 137 pages.

THE COURT: Well, we will excise it.

MR. HAMILL: Of irrelevant testimony.

THE COURT: We will excise it.

MR. FRAZER: I understood that such portions of the record as seemed relevant to counsel only need be printed on their appeal.

MR. HAMILL: All right, now; perfect. Now, will you tell us just what is relevant to Judge Botti in that record?

MR. FRAZER: All of the rulings of Judge Botti are relevant.

MR. HAMILL: And how many rulings are there?

MR. FRAZER: Well, I haven't counted them.

MR. HAMILL: You haven't read it?

MR. FRAZER: I have read portions of it, but very few.

MR. HAMILL: What portions?

MR. FRAZER: Just the portion in the very front part of it.

MR. HAMILL: I see. The part you are looking at now?

MR. FRAZER: Yes, just the few front pages—the part which the Court has read.

MR. HAMILL: And from that you reach the conclusion that it is relevant?

MR. FRAZER: Oh, no.

MR. HAMILL: The whole 137 pages.

THE COURT: All right, go ahead.

MR. HAMILL: I object to the introduction of the record on the ground that what happened before Judge Botti is not relevant in this case. I object to the introduction of the record for the purpose of proving what Judge Botti did, for the reason that what Judge Botti did is not relevant in this case, and I ask for a ruling.

THE COURT: We haven't reached, at least I didn't understand yesterday that we had reached, any evidence with respect to any police Judge, whether his name was Botti or whatever his name was. I understood that evidence was offered to show the testimony at the trial, and I so admit it. Now, if it becomes relevant to rule upon the conduct of some police magistrate at some time, I will be glad to do so, if urged.

MR. HAMILL: And your Honor will grant me an exception to the ruling?

THE COURT: I am only admitting that—yes, I certainly will—I only admit it as respects the testimony, the actual words from the mouths of the witnesses.

MR. FRAZER: And the rulings of the Court with relation to it, I take it.

THE COURT: If it affects their testimony.

MR. HAMILL: Now, the Court is admitting the words of the witnesses regarding everything that happened throughout the entire trial?

THE COURT: You may have a motion to strike.

MR. HAMILL: I may have an exception?

THE COURT: All right, you may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

(Stenographic record referred to received and marked Exhibits P-2 and P-3.)

By MR. FRAZER:

Q. Miss Cox, after the trial—I assume that you stayed there?

A. Yes.

Q. And what did you do then?

A. I believe I returned to Newark, disgusted.

Q. Now, subsequent to November 29, 1937, Miss Cox, did you make any efforts to rent halls in Jersey City on behalf of the Civil Liberties Union?

A. I did; several.

Q. Will you state what those efforts were and what happened?

A. In my attempts to get halls for the Civil Liberties Union, I first phoned some friends of mine to find out what personal contacts they had in Jersey City, because I realized how difficult it was going to be. Through some of these contacts I phoned and spoke with the reverends at the Methodist Church, the Methodist Episcopal Church, and the Lutheran Church.

MR. HAMILL: Now, I object—that's all right; she spoke, the fact; but I object to anything that was said in the conversation.

THE COURT: Well, she has not said anything yet. Could you give the names?

MR. HAMILL: I mean I am objecting before she does.

THE COURT: Could you give us the names, Miss Cox?

THE WITNESS: I only recall one just now—Reverend McLoughlin, Methodist Episcopal Church. I can get the other names.

THE COURT: Yes, give us the other names.

A. (Continuing.) I also tried—well, I might finish that. I was unsuccessful in getting these halls because these men feared intimidation——

MR. HAMILL: I object to that.

A. (Continuing.) —and reprisals.

THE COURT: You must not give their reasons.

MR. FRAZER: If it please the Court——

THE COURT: We will get the witnesses here. I will make the same ruling I did yesterday. The owners of these halls will be produced.

MR. FRAZER: May I make a suggestion to your Honor?

THE COURT: And I suggest to you, Dean Frazer, that they will not fail to tell the truth. No one can intimidate witnesses in my Court. Anything they say in this Court will not result in any harm to them, I will guarantee it.

MR. FRAZER: I think your Honor cannot fully guarantee that, sir.

THE COURT: I certainly can guarantee it.

MR. FRAZER: And it seems to me that the question of the efforts made——

THE COURT: I am allowing the evidence of the refusal, but the reasons——

MR. FRAZER: The reasons which were assigned for the refusal, however,——

THE COURT: The persons assigning the reasons will appear in this court, and they will freely and fully give their testimony; and no one will intimidate them.

MR. FRAZER: Well, may I ask an exception to your Honor's ruling?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. What other efforts did u make, Miss Cox?

A. I also attempted to get the Masonic Hall near Fairmount and Bergen Avenue and I tried to get the Y. M. and the Y. W. C. A.——

THE COURT: Can you give us names also there, Miss Cox?

THE WITNESS: Of the individuals?

THE COURT: Yes; or get them, if you can't remember them now.

THE WITNESS: I will have to get them.

THE COURT: Yes.

THE WITNESS: I don't recall them now.

Q. Any others?

A. All of these attempts were unsuccessful. One I tried at the Fairmount Hotel. I went over to Jersey City after having made an appointment with the new manager there, Mr. Moser. I told him the purpose of the meeting and I told him that the speakers we were going to have were going to be Congressmen——

MR. HAMILTON: I don't think it is relevant, what she told him.

THE COURT: Did he refuse to give you the hall?

THE WITNESS: He agreed to let me have the meeting hall.

THE COURT: Then he agreed. Then did anything else happen after that?

THE WITNESS: I paid a deposit. He asked me the details about the meeting——

MR. HAMILL: No, I object. "He asked me"—this evidently must be a repetition of a conversation.

MR. FRAZER: Well, there must be some testimony as to just what happened. You can't be deaf and dumb.

THE COURT: Tell us what happened.

MR. HAMILL: You are trying to prove something which necessarily rests on the evidence of another man who is not here.

THE COURT: Well, he is going to be here.

MR. HAMILL: I mean who is not here at the present time.

THE COURT: Yes, but he will be.
Just say what happened in respect to a refusal.

A. (Continuing.) Well, Mr. Moser gave me the right to hold a meeting in his hall at the date that I applied for that right. Several days, two days later, he phoned me at my office and at my home——

MR. HAMILL: Now, Miss Cox, please don't tell us what he said to you—not until the Court, his Honor, rules on it.

A. (Continuing.) As a result of the telephone conversations, I received my deposit in the mail and a letter regretting that his hall was not the type that he had described to me and could not be used for the meeting.

THE COURT: Have you got the letter?

THE WITNESS: I can give you that, too.

THE COURT: Will you bring it?

MR. HAMILL: What hall was that, Miss Cox?

THE WITNESS: The Fairmount Hotel.

THE COURT: She told us that.

MR. HAMILL: I didn't hear it. I merely call the Court's attention to the fact that in answer to the bill of particulars, that particular hall is not included in the information given in the bill of particulars. We asked in our bill of particulars for the halls and your Honor ruled that we should get a list of the halls. That particular hall is not in this list.

THE COURT: Will you show that to the other side, please? Maybe there is some error.

MR. GLAVIN: Fairmount Hotel.

THE COURT: Maybe there is some confusion about it.

MR. HAMILL: We have Fairmount Hall, but that is a different thing from Fairmount Hotel.

THE COURT: No, I don't think it is.

MR. HAMILL: Well, then——

THE COURT: Will you ask the witness? Because I don't know.

MR. HAMILL: Is this the Fairmount Hotel?

THE WITNESS: This is the Fairmount Hotel, but any attempts to get the Fairmount Hotel are unsuccessful.

MR. HAMILL: I ask that that be stricken out. Are you referring, Miss Cox, to the Fairmount Hotel?

THE WITNESS: I am referring to the Fairmount Hotel.

MR. HAMILL: That is the one on Journal Square?

THE WITNESS: The one on the Boulevard.

MR. HAMILL: Oh, on the Boulevard, near Fairmount Avenue?

THE WITNESS: Yes.

MR. HAMILL: You are not referring to the Fairmount Hall?

THE WITNESS: No, sir, I am not.

MR. FRAZER: Apparently there is a misapprehension in the report and I would ask leave to amend the bill of particulars, to change Fairmount Hall to Fairmount Hotel. That is purely a case of misapprehension.

THE COURT: I think that can be done.

MR. HAMILL: Oh, all right. Go ahead. All right.

By MR. FRAZER:

Q. Now, Miss Cox, do you know about any applications made on behalf of the Civil Liberties Union for open air meetings in Jersey City?

A. I know of one in particular.

Q. Who made the application, do you know?

A. Mr. Samuel Macri.

Q. And do you know anything of a letter from Mr. Rothbard, December 17, 1937, addressed to Mr. Casey?

MR. HAMILL: I object to that. The letter speaks for itself.

THE COURT: Have you got the letter?

MR. HAMILL: I object to it.

MR. FRAZER: It is attached—I understood Mr. Hamill to say yesterday that there would be no dispute about these letters and that he would produce the originals, or that we might use copies.

MR. HAMILL: Mr. Frazer, whatever I said, I will abide by and adhere to in this trial. There isn't any doubt that we received that letter. We received it. All right. That is the Rothbard letter.

Q. I direct your attention to the letter of Mr. Rothbard. Do you know about that application?

A. Yes, I heard about this application.

MR. HAMILL: I object. What can this witness prove other than what is contained in the letter? An application was made and denied.

MR. FRAZER: All right. Now, I am going to offer then the letter of December 17, 1937, addressed to the Honorable Daniel J. Casey, signed Samuel Rothbard, in behalf of the American Civil Liberties Union.

MR. HAMILL: And as far as any other of those papers, I will not object to their relevancy or irrelevancy at this time, and if you want to put those in, Mr. Frazer, in order to get them into the record at this time, I haven't any objection. I don't think we question their accuracy.

MR. FRAZER: The letters are attached to the bill.

MR. HAMILL: We do not question the accuracy of any of these documents, do we?

MR. HERSHENSTEIN: No, no.

MR. HAMILL: No, we do not question the accuracy of any of these documents.

MR. FRAZER: Suppose then we offer all of the letters which are attached to the bill of complaint.

MR. HAMILL: Yes.

THE COURT: You mean copies are attached.

MR. FRAZER: They are attached.

MR. HAMILL: Subject to such objections that I want to make on the ground that they are immaterial or irrelevant, but I mean as to the fact that these are true copies of genuine letters or papers, we admit that or of actual letters and papers.

Q. Now, Miss Cox, were you present at a meeting in Pershing Square last Friday in Jersey City?

A. I was.

MR. HAMILL: I object. Any evidence of anything that happened after the bill of complaint was filed is not admissible, unless the bill is amended for that purpose.

THE COURT: I think that is true.

MR. FRAZER: Continuance of the plan, sir. Mr. Hamill awhile ago accused me of neglect in not having allegations as to those things in my bill.

THE COURT: Well, why waste time on it? You can amend your bill.

MR. HAMILL: All right. Then your Honor——

MR. FRAZER: I will supplement the bill.

MR. HAMILL: If he amends his bill, we allege surprise and we ask an adjournment, to be able to meet the new matter.

MR. FRAZER: We are carrying out—we have stated in our bill, sir——

MR. HAMILL: We didn't—excuse me.

MR. FRAZER: We have stated in our bill, sir, that there was a plan, which was still persisting. If the plan had been stopped, there would have been no purpose for our coming into this court; but it is still persisting, and we wish now to prove that as late as last Friday the same system was in vogue in Jersey City; and I am offering Miss Cox for that purpose.

THE COURT: Well, I think——

MR. HAMILL: Now, if your Honor please, I want you to weigh that statement.

THE COURT: I think in your own interest you want the whole issue set out.

MR. HAMILL: If your Honor please, I want that statement weighed and considered. The bill was filed last January and he, last January, when he filed the

bill, envisioned a meeting in Journal Square on last Friday. Now, he does not mean that, surely.

MR. FRAZER: No, I didn't envision that specific meeting but I envisioned something very like——

MR. HAMILL: In other words, what he told the Court was "This is going to happen in the future." Well, we are not obliged to meet what is going to happen in the future. We could not answer that.

MR. FRAZER: My bill charges as follows: The unlawful acts of the defendants——

THE COURT: In your own interest you want the whole issue spread out.

MR. HAMILL: What?

THE COURT: In your own interest you want it all spread out.

MR. HAMILL: There is no allegation that we can answer, and we stand on our objection.

THE COURT: You may have an exception.

MR. HAMILL: And your Honor will let it in?

THE COURT: Yes.

MR. HAMILL: And if your Honor amends the bill, our objections——

THE COURT: I am not going to amend the bill.

MR. HAMILL: I beg your pardon. I mean if your Honor permits the amendment of the bill——

THE COURT: Yes.

MR. HAMILL: We then object, we then plead surprise and ask for an adjournment, time to file an answer.

THE COURT: Your motion is denied. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Miss Cox, will you state what happened there?

A. The meeting at Pershing Square, Pershing Field, was called by the Hudson County Committee for Labor Defense and Civil Rights. I saw a handbill advertising the meeting and knew that Congressman O'Connell was scheduled to speak. The meeting was scheduled for seven-thirty. I arrived there to be with some friends between seven and seven-thirty. We went into the park, the field rather. I spoke to a policeman, asking him how many there were on duty that evening.

MR. HAMILL: Now, if your Honor please, I object to that.

THE COURT: Yes.

MR. FRAZER: This is part of the same picture, sir.

THE COURT: No, Dean Frazer, you cannot.

A. (Continuing.) I continued——

Q. Did you see policemen there?

A. I saw many policemen.

Q. How many do you think?

A. Five hundred.

Q. Will you tell us now what happened.

A. After walking a short distance down the path my husband and I and Robert Parker were recognized by Daniel Casey, Commissioner of Public Safety, who had seen us on several occasions in court—not on trial I might add—he pointed us out—not to the policemen nor to the persons whom we knew to be plain clothes men, as had been done before, but to persons who we could not identify in any way.

MR. HAMILL: I object to that. What difference does it make?

MR. FRAZER: This is one of the actions by one of the defendants.

MR. HAMILL: Is there anything wrong in a man pointing another man out to somebody else?

MR. FRAZER: Let's see what happened.

MR. HAMILL: I might point you out by reason of your distinction. No one would say that would be wrong.

MR. FRAZER: I would be very much pleased to be pointed out.

MR. HAMILL: And you would return the compliment?

MR. FRAZER: Yes.

Q. Go ahead.

A. We were pointed out and trailed——

MR. HAMILL: I object to the use of the word "trailed".

THE COURT: Yes, don't use words of the art, so to speak.

A. Well, followed.

THE COURT: Yes.

A. Word was passed along from these two men to groups of other persons who were there.

MR. HAMILL: I object. Tell us what was said.

A. These groups followed us.

MR. HAMILL: Excuse me, Miss Cox. Word was passed along to other groups? Let us know what was said?

A. We saw Daniel Casey speak——

MR. HAMILL: Yes.

THE WITNESS: Speak to other persons at the field, pointing us out.

MR. HAMILL: Yes.

THE WITNESS: These persons followed us.

MR. HAMILL: What did Daniel Casey say, that is what we want to know?

THE WITNESS: He said nothing to us.

MR. HAMILL: He merely pointed you out, Miss Cox?

THE WITNESS: He pointed us out.

MR. HAMILL: To people——

MR. FRAZER: One moment. Is Mr. Hamill starting to cross-examine the witness? I don't think he is trying to identify someone.

MR. HAMILL: Well, I tried to clarify the situation, to see what the situation was.

A. We were followed by persons to whom we had been pointed out all evening on the field. When we spoke about the possibility of Congressman O'Connell arriving there——

MR. HAMILL: I object to that.

THE COURT: Yes.

A. Congressman O'Connell arrived at the field between eight and eight-fifteen. Some of our friends recognized him and followed along with him. I saw a great surge of uniformed men and plain clothes men—these men I know—when I say plain clothes men I mean of the police force—follow—rush on Congressman O'Connell and push him into a police car driven by a uniformed policeman. I saw Congressman O'Connell struggling throughout the whole thing.

The friend who had driven us to the field left shortly after Congressman O'Connell had been taken away, saying he would return for us.

MR. HERSHENSTEIN: I object.

MR. HAMILL: I object to that.

Q. Did he return?

A. He returned but we had gone.

Q. What happened to you——

MR. HAMILL: You did not see him return?

THE WITNESS: No, we did not see him return.

MR. HAMILL: Then I object.

Q. What happened in the meantime to you?

A. We spoke to several of our friends and discussed what had happened to Congressman O'Connell.

MR. HAMILL: I object, irrelevant. What evidential value has this?

MR. FRAZER: It has no evidential value but it goes to the picture.

MR. HAMILL: That picture seems to bother you terribly. You will never be happy until you get the picture in.

Q. What happened?

A. Robert Parker and I went to wait at the corner where we were expecting this man to come and pick us up. While we were waiting several police were around. These same groups of persons who had trailed us—who had followed us around early in the evening were around the corner and kept milling around on the pavement itself or up into the corner of the field. While we stood there we saw several threatening motions.

MR. HAMILL: I object.

MR. FRAZER: Threatening motions. She is describing an act.

MR. HAMILL: Yes, that is a conclusion.

THE COURT: Sustain the objection.

MR. HAMILL: This is a conclusion. What we want to know is the fact——

THE COURT: I have sustained your objection.

Q. You saw certain motions?

A. I saw a man make a fist as if to swing at my husband.

MR. HAMILL: I object.

THE WITNESS: Those are acts.

MR. FRAZER: Yes, that is an act.

Q. What happened? Did he swing?

A. He was—a companion spoke to him at that time and he said, "No, let's wait until we can get the chief, too."

MR. HAMILL: I object to that, this conversation not in the presence of the defendants. The chief was not there at the time.

Q. Was the chief there at the time?

A. We don't know who the chief was at the time.

MR. HAMILL: He didn't hear this conversation?

A. We heard this conversation.

MR. HAMILL: That is, you heard it. The chief didn't overhear it?

A. I don't know who the chief is. I don't know whether it is a capital "C" or a little "c."

MR. HAMILL: The conversation is irrelevant.

Q. What happened after? Did the chief come?

MR. HAMILL: Has your Honor ruled? She heard someone say "Wait until we see the chief."

THE COURT: I will sustain the objection.

Q. Now, will you say what happened? Did anything happen afterward, whether the chief came or not?

A. Bob Parker recognized someone who had beaten up pamphleteers——

MR. HAMILL: I object, irrelevant. Now, if they want to say Bob Parker recognized somebody, never mind why he recognized him——

MR. FRAZER: Yes, keep to what you saw.

A. Robert Parker turned to me and said——

MR. HAMILL: I object to what he said.

THE COURT: You will have to have him here.

MR. FRAZER: Apparently she is not allowed to say what she said. Will he be allowed to say what he said?

MR. HAMILL: Under your skillful guidance he may be able to tell many things, and if he does not say it you will say it for him.

A. Upon hearing what my husband said to me, he and I left quickly to the corner upon which we had been standing and where others stood to get a bus. Waiting for the bus were two friends of ours. As we approached them our attention was directed toward them by a whistle which was blown——

Q. Yes, I guess there was a whistle all right.

A. And I saw several persons rushing over from the other corner, led by a man whose arm was up, outstretched, with his fist. I called "look out." That blow hit my husband between the eyes.

MR. HAMILL: I object, unless in some way it is connected with the conduct of the defendants. It may have been some brawler who was out there.

MR. FRAZER: I object to counsel's connotations.

MR. HAMILL: I don't see how you are going to blame these defendants.

Q. Did anything happen to you, Miss Cox?

A. I was pushed out of the way and into the street, knocked off my balance——

MR. HAMILL: By whom, may I ask, Miss Cox? By the crowd?

A. By the person, by this man whom I later saw beating my husband.

MR. HAMILL: Unless she connects this man, unless she shows agency in some way, or connects him with them——

THE COURT: You will have to have your husband tell what happened to him.

MR. FRAZER: She can say she saw him being kicked.

MR. HAMILL: She is describing the events that happened at a great big mass meeting and offering it as evidence against these defendants.

THE COURT: Have you any knowledge that they were connected with or were officials of Jersey City?

THE WITNESS: I cannot prove it at this time.

MR. HAMILL: I move that it be stricken out.

THE COURT: Strike it out.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Miss Cox, you say you are a member of the New Jersey Civil Liberties League——

MR. FRAZER: Just a few more questions, if I may?

DIRECT-EXAMINATION (Continued).

By MR. FRAZER:

Q. Did you see Sam Macri there that night?

A. Sam Macri spoke to me twice—three times during the evening.

Q. Did you see him at the end of the evening or was he——

A. I saw him as I went into the field. He asked when O'Connell was coming and——

MR. HAMILL: Go ahead, I don't mind. There is no doubt O'Connell came there.

Q. Was he all right when you saw him?

A. He was all right when I saw him. I saw him later in the evening after Mr. O'Connell had visited the field and was no longer there, and he spoke to me later in the evening after Mr. Parker and I were waiting on the corner.

Q. Do you know what happened to him afterward?

A. Yes.

MR. HAMILL: Do you know of your own knowledge?

THE WITNESS: I was not a witness to it.

Q. Have you seen him since?

A. I have not seen him since.

MR. FRAZER: All right.

Q. Just go back; as I understand it you say you saw Director Casey directing certain persons or speaking to them with relation to you and pointing you and your husband out?

A. Yes.

Q. Now, were any of the persons who were in the group at the corner when your husband was struck, any of those to whom Director Casey had spoken?

A. Director Casey spoke to two men. One of those two men I saw——

MR. HAMILL: Will you say that again?

THE WITNESS: That attacked my husband.

Q. One of the two men whom Director Casey spoke to about you—pointing you out—was in the group which attacked your husband, is that right?

A. Correct. There were many other persons to whom——

MR. HAMILL: So what? I object to the relevancy of this.

MR. FRAZER: I submit now that the testimony is relevant as directly connected with Director Casey.

MR. HAMILL: How does that connect Director Casey?

MR. FRAZER: She stated just a moment ago that the two men that Director Casey had spoken to, calling their attention to her and her husband, and who subsequently had gone around and spoke to the other group, pointing them out, that one of those two men was in the group which came over and rushed her husband and struck him.

MR. HAMILL: And that therefore that is reflected on this defendant? Has he committed a crime in pointing them out?

THE COURT: Would you know them if you saw them again?

THE WITNESS: I would know the men to whom Director Casey spoke. I would know the two men to whom he spoke, one of whom I later saw attack my husband. I would also know the man who struck my husband between the eyes.

THE COURT: Were they in uniform?

THE WITNESS: They were not in uniform.

THE COURT: I think we will have to wait until Director Casey is a witness.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Miss Cox, you say you are a member of the New Jersey Civil Liberties Union; is that correct?

A. I am a member at the present time—I am on the executive board.

Q. You are a member of the executive board?

A. Of the New Jersey Civil Liberties Union.

Q. A member of the executive board of the New Jersey Civil Liberties Union. Now, is that connected with the American Civil Liberties Union?

A. It is an affiliate of the American Civil Liberties Union.

Q. It is an affiliate of the American Civil Liberties Union. Is your body an incorporated body?

A. No.

Q. Are you a corporation?

A. No.

Q. I mean are you incorporated by papers filed in Trenton?

A. No, not to my knowledge.

Q. Now, Miss Cox, you told us about applying to the owner of Fairmount Hall.

A. Yes.

Q. Do you know his name?

A. The Fairmount Hotel.

Q. Fairmount Hotel.

A. I applied to the manager.

Q. Do you know his name?

A. Moser.

Q. Now then, as to the other places you tried to rent, do you know the names of the persons to whom you applied?

A. I can recall only one at the present time, the others I will be glad to give you.

Q. Which one do you recall at this time?

A. The Reverend McLaughlin. I believe it is William McLaughlin.

Q. What hall was that?

A. The Methodist Church.

Q. Located where?

A. I think on Magnolia, something like that, street or place or avenue.

Q. Did you try to rent Fairmount Hall at Bergen Avenue and Fairmount?

A. Yes.

Q. And were you successful?

A. I was.

Q. You did rent that, but the others you could not?

MR. FRAZER: She stated so on direct examination, she had no difficulty on Fairmount Hall.

MR. GLAVIN: The testimony on direct examination was she could not rent Fairmount Hall.

MR. FRAZER: I beg your pardon. She made that distinction. She said on direct she had no difficulty in getting Fairmount Hall. It was Fairmount Hotel she could not get. She made that statement on direct.

MR. HAMILL: I think that is all, Miss Cox.

(Witness excused.)

JULES NYDES, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

MR. HAMILL: What is his address?

THE WITNESS: 339 East 16th Street, New York City.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Nydes, what is your business?

A. I am district representative for the United Electric Radio Machine Workers. I am affiliated with the CIO, District No. 4.

Q. Are you a college man?

A. I am.

Q. What degrees do you hold?

A. I hold a B. A. degree.

Q. From what university?

A. University of Wisconsin.

Q. With honor?

A. I graduated cum laude in 1934, major study was philosophy.

Q. Were you in Jersey on the night or on the day of November 29, 1937?

A. I was.

Q. Will you relate the events of that day, so far as they affected you?

A. I arrived at the Grove Street Station at about 6 A. M. It had previously been arranged for Albert Pissadi, a field organizer of the United Mine Workers of America, Albert Smith, who occupied the same position, Niel Brand, national representative of my union and myself, to meet at Grove Street in the car owned by Albert Smith at six-thirty.

When I arrived at six o'clock I found a number of policemen in uniform at the station on the platform. I saw a number of uniformed policemen on the outside.

I went to a cafeteria in order to wait for six-thirty to arrive. While I was waiting there a number of remarks were made——

THE COURT: What day do you say this was?

THE WITNESS: November 29th.

Q. By whom?

A. By the people who were at the counter. These remarks had reference to what would occur at Jersey City on that morning. One of the counter men in particular said——

MR. HAMILL: Never mind what they said. I object.

THE COURT: Tell us what happened, not what was said.

THE WITNESS: Very well. At six-thirty I met Albert Smith and Albert Pissadi, who came to Grove Street in their car. I got into the car and we decided to wait for Niel Brand. As soon as the car parked a

police car rolled up alongside of us. Two police officers got out. We were asked to identify ourselves, which we did.

MR. HAMILL: Did you tell them that you were a graduate cum laude?

THE WITNESS: That was not part of the identification they required. They asked what our business was in Jersey City that morning and we informed them what our business was. He then asked us to get out of the car and both officers proceeded to search us. I questioned this procedure and the officer——

MR. HAMILL: I object, what he questioned.

Q. What he did.

MR. HAMILL: That means he said something and he is not allowed to testify to what he said.

MR. FRAZER: I thought he was.

MR. HAMILL: As to what took place.

MR. FRAZER: I thought a moment ago it was only what somebody else said that he could not testify to.

MR. HAMILL: No. That comes under the simple rule of self-serving declarations, and you know the rule.

MR. FRAZER: He is testifying, may it please the Court, as to what happened. We are now dealing with the police.

THE COURT: Yes, tell us what happened.

A. I asked him whether he had a warrant to search me. He said he did not and that it was not necessary, that this procedure was not unusual, since this was the treatment——

MR. HAMILL: I object——

THE WITNESS (Continuing): —accorded to most non-residents——

MR. HAMILL: I object.

MR. FRAZER: This is the policeman talking now. I have a right to know what the policeman said.

THE COURT: You may answer.

MR. HAMILL: Not unless we get the name of the policeman. What was the name of the policeman?

THE WITNESS: I asked the policeman for his name but he said it was none of my business so I took his badge number and I believe I have a record of it.

MR. HAMILL: Let me have the badge number then.

THE WITNESS: I don't have the record of it on my person.

MR. HAMILL: Will you get the badge number?

MR. FRAZER: May I ask Mr. Hamill to address his remarks to the Court. He is continually bickering with my witnesses.

MR. HAMILL: If he has the badge number, then I ask your Honor to instruct the witness to produce the badge number.

THE COURT: He said he had.

MR. HAMILL: Well, if he does not produce the badge number, then it is my motion that his testimony be stricken.

MR. FRAZER: That is subject to a future motion, isn't it, and a future passage?

THE COURT: Go ahead.

THE WITNESS: The police officer said that this procedure was not unusual and that this treatment was accorded to anyone who came into Jersey City, who was not a resident of Jersey City.

He then looked in the back of the car where there were 500 leaflets. He seized these leaflets and I again asked him why he was confiscating private property. He replied that we might retrieve these leaflets through due process of law.

MR. HAMILL: What did the officer say? That you might retrieve——

MR. FRAZER: Retrieve them through due process of law.

MR. HAMILL: The policeman said these things, that you might retrieve——

THE WITNESS: I don't think he used the word retrieve.

MR. HAMILL: I wanted to know if we had a policeman who was graduated cum laude. I never knew it.

THE WITNESS: He said we could get them back by due process of law.

Q. What did he do with those leaflets?

A. He took them into his car and asked us to wait. After about fifteen minutes a plain clothes man came up and asked us what we were doing in Jersey City. We replied that it was our intention to distribute these leaflets outside the gates of various factories in which we were interested in Jersey City. He asked me if I was aware of the fact that there was an ordinance prohibiting such distribution? I said I was not aware of that.

He then asked us what we intended to do. He asked whether we wanted to distribute. We pointed out to him it was not possible for us to distribute since he had seized the leaflets. He said: "What if I give you some back, would you distribute them?" We asked would he guarantee we would not be arrested? He said: "We will give you no guarantee." He then asked us to leave Jersey City.

MR. HAMILL: Now I ask that that all be stricken. What value has it?

A. (Continuing.) We went around the block a few times with the car, then proceeded directly to the Westinghouse Elevator Corporation.

Q. Had Mr. Brand come in the meantime?

A. Mr. Brand had not come. When we got to the Westinghouse Elevator Corporation we saw Mr. Brand, together with four others. Their names are Frank DiGiordano, a member of Local 421 of our union and a resident of Jersey City; John McCullough, also a member of Local 421; Frank Huzzan, likewise a member of Local 421, a resident of Jersey City, and Joseph Kish, a member of Local 421 and a resident of Jersey City. Frank DiGiordano, Mr. Albert Smith and Huzzan went toward the building. I got out and proceeded to distribute circulars outside of the Westinghouse Elevator Corporation. Also distributing them at the time were the four others I mentioned, namely, DiGiordano, Kish, McCullough and Brand.

THE COURT: Have you a copy of those circulars?

THE WITNESS: I have not one with me but I think one has been submitted in evidence.

THE COURT: The same one?

THE WITNESS: The same one. We were distributing these leaflets for about fifteen or twenty minutes and around this time two police cars came up, two officers got out, one police officer asked for a leaflet. He read the word "C. I. O." then he turned to us and said, "You are under arrest." I asked "What is the specific charge?" He said, "You will find out when you get to court."

We waited outside of the factory for about fifteen minutes and another car came up and we were taken to court. I don't know the name of the court, it is the court over which Judge Botti presided, however.

It was now about nine o'clock in the morning. We were kept there until two o'clock when we were brought to trial.

THE COURT: Is that the same trial we have been speaking about, Mr. Frazer?

MR. FRAZER: Yes, sir.

THE WITNESS: At the conclusion of the trial, I, together with six others were sentenced to five days in the city jail. Those five days I served.

Q. Were there any others with you at the time beside the five?

A. At the time of the trial?

Q. Yes. Were five the total number of them?

A. Seven was the total number. Shall I name the seven?

Q. Yes.

A. These seven, the six in addition to myself, were: Niel Brand, Albert Pissadi, Frank DiGiordano, John McCullough, Frank Huzzan and Joseph Kish.

THE COURT: Did you make application for bail?

THE WITNESS: I personally?

THE COURT: Yes, through someone else, your counsel.

THE WITNESS: Well, as soon as we were finished we were locked up and we didn't see anyone for two days afterwards, so I really don't know.

Q. Did you attempt to communicate with counsel, ask leave?

A. I believe that while we were waiting——

MR. HAMILL: I object, if your Honor please.

THE COURT: Don't tell us anything you don't know, please. Just tell us what you know.

THE WITNESS: Well, I was informed that counsel had——

MR. HAMILL: I object what he was informed.

MR. FRAZER: We will prove that in another way. Are you one of the prisoners in the writ of certiorari which was recently allowed by the Supreme Court?

A. I am.

Q. And as far as you know there has been no withdrawal of that prosecution?

A. As far as I know there has been no withdrawal.

Q. During your period in jail did you sign any papers, appeal papers?

A. I did not.

Q. Do you know whether there were efforts made to bring them to you?

MR. HAMILL: Oh, Mr. Frazer, I object.

MR. FRAZER: I will prove that in another way. Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Now the officers that you met when you first reached Jersey City said, "This is the treatment accorded to anyone who comes into Jersey City," did he?

A. Those were not his exact words.

Q. Well, you purported to give us his exact words. That is what we want.

A. When he searched me I asked him why he was doing this and whether I had committed a crime and whether he had a warrant.

Q. What did he say?

A. He replied: "Don't get sore about it, we do this to anybody who is a non-resident of Jersey City, who comes in without Jersey City license plates."

Q. Now that sounds like a cop talks, doesn't it? And he told you you might get them back where?

A. Get what back where?

Q. Get the circulars back that were taken from you. What did he say about that?

A. He said you can get them back—he didn't say this, this was said by a plain clothes man who came later.

Q. What did the plain clothes man say?

A. He said, "You can get the circulars back through due process of law." He didn't say where we could get them back.

Q. He said "Through due process of law?"

MR. FRAZER: Through due process of law.

Q. The plain clothes man said that?

A. Yes.

Q. Notwithstanding that he told you that there was an ordinance against distributing circulars?

A. I believe both the officer and the plain clothes man referred to the ordinance.

Q. You never knew there was an ordinance until then, did you?

A. No, I did not.

Q. Don't you read the newspapers?

A. Yes, I do.

Q. And you never saw anything about the battle going on about——

A. I certainly did.

Q. You did not?

A. I certainly did.

Q. Didn't the newspapers inform you that there was an ordinance in Jersey City that was being enforced against the distribution of literature?

A. I was fully aware of the fact of police interference with the right to organize and distribute literature. I was not aware of the fact that the Jersey City government found it necessary to pass an illegal law for this purpose.

Q. That is—so when did you reach the conclusion that they should not have passed an illegal law? Before you came in, didn't you?

A. As soon as I was aware that there was such a law.

Q. And that was before you came in?

A. I said it was after I had learned of the law.

Q. Well, you came in and found out there was an ordinance, before that you never knew anything about it?

A. Not about the ordinance.

Q. You knew that the police were preventing people from distributing circulars?

A. I knew that. I knew other things, too.

Q. Now how long before you came into Jersey City was it that you knew that fact?

A. That the police were interfering with distribution?

Q. Yes.

A. Oh, I would say about a month or so.

Q. And why did you think they were interfering with them?

MR. FRAZER: I object.

MR. HAMILL: Wait a minute, this is cross-examination. Why did you think—under an illegal law.

A. Because I was aware of the fact that Jersey City was a haven for sweat shops and for factories with very poor working conditions.

Q. Yes.

A. I knew that they could not——

MR. FRAZER: Let him finish his answer.

MR. HAMILL: Let him go ahead. I want to give him a chance to reveal himself, his animus and everything else. Let him go right ahead.

MR. FRAZER: May we have that last struck?

MR. HAMILL: Then I will say "spew his bile," I will put it that way.

MR. FRAZER: Go ahead, Mr. Nydes.

A. I was aware of the fact that Jersey City is a place where there was very little organization, and I knew that this was so because there was police interference which I had heard about——

Q. Now, stop right there.

MR. FRAZER: Let him finish.

MR. HAMILL: He has finished now.

MR. FRAZER: He has not finished.

MR. HAMILL: He has answered my question and I have let him go as far as I am going to let him go.

MR. FRAZER: He has not answered it and I submit the witness has a right to continue to give his answer.

MR. HAMILL: Providing he speaks relative to the question.

Q. Now let me get the question and then compare the witness's answer.

MR. FRAZER: Will the stenographer repeat the question?

MR. HAMILL: Yes, let's have the question.

(Questions repeated by stenographer as follows):

"Q. Now how long before you came into Jersey City was it that you knew that fact?

"A. That the police were interfering with distribution?

"Q. Yes.

"A. Oh, I would say about a month or so.

"Q. And why did you think they were interfering with them?

"MR. FRAZER: I object.

"MR. HAMILL: Wait a minute, this is cross-examination. Why do you think—under an illegal law.

"A. Because I was aware of the fact that Jersey City was a haven for sweat shops and for factories with very poor working conditions."

MR. FRAZER: Now he is expressing why he thought so.

MR. HAMILL: Now, if your Honor please, he thought they were interfering with an illegal law because there were sweat shops.

Q. Well, what was the illegal law that you thought they were interfering with?

A. As I listened to the question I didn't hear the last part of it. Why did I think they were interfering because there was an illegal law? I didn't hear that.

Q. No. Answer this question. What illegal law were they interfering with?

A. I don't understand the question.

Q. You said that they were acting under an illegal law.

THE COURT: "Ordinance" he means.

Q. All right. If you mean an ordinance, then what illegal ordinance did you think they were acting under?

A. At which time?

Q. At the time you became informed of the fact that police were interfering with the distribution of circulars?

A. At the time I became informed of the fact that police were interfering with the distribution of circulars I was not aware of the fact that there was an ordinance against such distribution. I merely assumed at the time that such interference was done without any law at all.

Q. Oh; did you inquire from anyone to find out?

A. No, I didn't.

Q. And didn't you see the newspaper account of the fact that Jersey City was invoking an ordinance against the distribution of circulars?

A. I saw such account after November 29th.

Q. You read the newspapers before November 29th?

A. Yes, I did.

Q. And don't you know that for weeks and months before that the newspapers carried columns on the subject of the ordinance in Jersey City? You know that?

A. As far as I remember the newspapers referred to the fact that Mayor Hague didn't want the CIO in Jersey City and referred to the ways and means whereby he would keep the CIO from Jersey City. That is my recollection of the newspaper accounts previous to November 29th.

Q. And didn't you read in the papers that one of the means was the invocation of an ordinance against the distribution of circulars?

A. I don't recall it.

Q. Didn't you read that? And that he was keeping it out by means of that ordinance?

A. I answered that question.

Q. Well, answer it again.

A. No.

Q. You did not?

A. No.

Q. And the first you knew that was when you came into Jersey City and the policeman told you?

A. That is correct.

Q. Now after he told you there was an ordinance, I suppose as a law-abiding citizen you then did not attempt to distribute circulars, did you?

A. No. I did attempt to distribute circulars.

Q. After you learned of the ordinance?

A. That is right.

Q. Why did you want to distribute circulars after you learned that there was an ordinance against it?

A. Because as one of my duties in the organization of the unorganized—that was one of my duties and I was interested in organizing the unorganized.

Q. And whether there was a law or no law, you determined you would go on with your duties?

MR. FRAZER: I object.

MR. HAMILL: This is cross-examination.

THE COURT: I cannot understand, Mr. Hamill, how you think this ordinance could be tested. I would be glad to be informed about it. You don't think, certainly, that any municipal unit can pass an ordinance or do anything else which is unconstitutional just because it is on the books?

A. It can never be tested?

MR. HAMILL: It can be carried up by certiorari.

THE COURT: That is exactly what happened in this case.

MR. HAMILL: I want to bring out this fact, which is evident to your Honor and affects the credibility of this witness. He knew nothing about the ordinance until he came to Jersey City. Then he said he knew all about the ordinance and he came to Jersey City to break it.

THE COURT: I understand that all of them knew about the ordinance and they thought it was unconstitutional and they adopted the only means of testing it. If there are other means, maybe that would be a matter of argument.

MR. HAMILL: If your Honor understands that, I am finished.

Q. Now, what union is it you say you belong to?

A. United Electrical Radio and Machine Workers of America.

Q. Have they a local in Jersey City?

A. They have, yes.

Q. Where is that located?

A. I believe it is 605 Grand Street. I am not sure of the address.

Q. Who was the head at 605 Grand Street?

A. You mean who is the local president?

Q. Yes.

A. I believe the name is Leonard Vena.

Q. How long have they been established in Jersey City?

MR. FRAZER: What is the object of this?

MR. HAMILL: They were evidently never interfered with in Jersey City.

MR. FRAZER: Is this cross-examination of this witness? I am just curious if it is cross-examination.

MR. HAMILL: I think it is testing this gentleman's credibility.

THE COURT: That is sort of a catch-all question? Do you want to make him your own witness?

MR. HAMILL: No, I don't want him for my own witness. That is all.

(Witness excused.)

AARON GILMARTIN, called and sworn on behalf of the plaintiffs, being examined, testified as follows:

MR. HAMILL: Address, please.

THE WITNESS: I now live in Yonkers, New York.

MR. HAMILL: What street?

THE WITNESS: 64 Shelly Avenue.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. What is your profession, Mr. Gilmartin?

A. I am an ordained minister.

MR. HAMILL: A what?

THE WITNESS: An ordained minister.

THE COURT: What denomination?

THE WITNESS: Unitarian.

Q. Now, in company with Mr. Clendennin and Mr. Hertzberg, I think——

A. Yes.

Q. Did you come to Jersey City on the morning of November 29, 1937?

A. I did.

Q. And you came from where?

A. I came from Newark, having arrived there from an out-of-town week-end trip.

Q. And you then went by tube to Jersey City?

A. That is correct.

Q. And from there to 76 Montgomery Street?

A. Yes.

Q. Will you say what happened, what you noticed when you came to the City of Jersey City and what occurred on your arrival at 76 Montgomery Street, and thereafter during the day?

A. First at the Tube Station, both below and at the street level I noticed a number of uniformed policemen. At the entrance to 76 Montgomery Street, arriving there, still quite early in the morning, a matter of about six-thirty, I met Edward Levinson, the labor organizer of Newark, and John Holley, an organizer in the New Jersey district for the Textile Workers Organization Committee.

As I have already said I was with Mr. Clendennin and Sidney Hertzberg. We all had bags, in addition to which I had a brief case and Mr. Hertzberg had a portable typewriter. We talked for a few minutes with Levinson and Holley on the sidewalk of 76 Montgomery Street and John Holley said, "Here come the police." Clendennin, Hertzberg and I entered the building in that order. Being the last I was able to see appear from around the corner, an exodus of more policemen—rather plain clothes men—and there were more men in uniform who rushed up the sidewalk in the direction of the office at 76 Montgomery Street. Being the last one in I was caught in the revolving door, I was unable to get clear of the door and into the vestibule. I was pushed through the door into the vestibule and held there by a plain clothes man. Other plain clothes men came through the revolving door, seized Mr. Hertzberg and one seized Mr. Clendennin halfway up the flight of stairs, which was the point where he had been able to get at that time.

A plain clothes man who had gone after Mr. Clendennin pulled him rather forcibly down the half flight of stairs and stood us all up in the vestibule. He asked us what we had in these bags. Mr. Clendennin protested, asking by what

right they were stopping us, and by what right did they ask us what was in our possession. The men refused to answer.

They put us through the revolving door out onto the sidewalk in front of the building, and seeing a uniformed policeman, Mr. Clendennin turned to him and called upon him to ask the man in plain clothes who had seized him forcibly and pulled him down the flight of stairs. The man in uniform said something but another man in plain clothes stepped forward and said he was in charge and would be responsible for the actions of these people. Mr. Clendennin asked him if he was an officer and if so to produce his badge. The man said he was an officer and produced his badge on which the title "Deputy Chief." He ordered our bags opened. Our suitcases were pulled open on the sidewalk. My brief case was gone through, the literature and printed matter which I had and which had the name of the organization, the Workers Defense League, was ransacked and even the case of Mr. Hertzberg, carrying his portable typewriter, was opened and handled—well, as a typewriter should not be handled.

After going through our clothing and papers and other things which were in our bags, the man in charge said, "Well, that is all right; you can go in now, you are gentlemen." And we were dismissed in that manner and allowed to proceed into the building at 76 Montgomery Street.

Whereupon we went upstairs to the office of the Boot and Shoe Workers Union. At the office of the Boot and Shoe Workers Union we found a number of other people, more came in in the succeeding minutes while we were there, and after a short time, about forty or fifty people, men and women, started from the office of the Boot and Shoe Workers Union upstairs to go out on the street and to proceed in the direction of the ferry and tube entrances in front of the Harborside Building. Some of these people had circulars which were to be distributed. I had some of these circulars myself. Others were there and went along without circulars, apparently just to observe just what went on.

I proceeded with this group of distributors down Montgomery Street in the direction of the Harborside Building. There were a number of radio police cars, men in uniform and plain clothes men all along the street. As we approached the Harborside Building I was stopped and told that I could not give out the circulars, whereupon I continued to give out circulars. I was taken by the arm by a plain clothes man who said I was under arrest for distributing circulars. He then seized Sam Macri and marched us both across the street where he delivered us over into the custody of another plain clothes man. This plain clothes man had in his custody three or four other people from the group of distributors. We were held there for a few minutes by this plain clothes man. He moved us down the street a few steps to the entrance of a bank building where a bank worker, a floor man or something, was cleaning the brass on the name plate in front of the bank, the bars in front of the bank—the iron grill barrier at the doorway—was opened and the plain clothes man tried to push us into the vestibule of the bank behind this opening of the bank, whereupon this bank worker protested and said this was a bank, this was not the legal hour for the bank to be open, and that he was there to protect the bank and we could not go into the vestibule and he kept us and the plain clothes man from going into the vestibule of the bank.

At that point the plain clothes man said, "Why don't you go back to New York and take the ferry?" Macri said he was not a New Yorker, that he lived in New Jersey, and he didn't want to go to New York, whereupon the plain clothes man said, "Well, go along anyway." I protested that I be told whether I was under arrest, and if I was under arrest I wanted to be taken to the police station and to be arraigned. The plain clothes man turned his back on me and the others who had been held up to that point, and finding ourselves thus left to our own, I recrossed the street and rejoined the group of distributors.

THE COURT: I want to read into the record—we will stop now, Mr. Witness—I have looked up and I have

verified my recollection of your statute, Congressman Hamill, Chapter 173, Treason and Offenses against the Government, under article 3, entitled "Anarchy." It has only been passed on, as far as I can currently find out, at least, in one case, and that is the case of The State v. Tachin.

MR. HAMILL: Is that by Justice Bergen?

THE COURT: No, Justice Swayze of the Supreme Court of New Jersey, 106 Atlantic, page 145.

MR. HAMILL: I can give you another case. Did I give your Honor the book yet?

THE COURT: Yes.

MR. HAMILL: I have a yellow sheet of paper there. It has been passed upon by Justice Kalisch and I think it has been passed upon——

THE COURT: Justice Kalisch decided the whole thing was unconstitutional, "The right of citizens to express their sentiments with freedom in a proper way could not constitutionally be taken away, and as long as the Constitution has vigor men may criticize the administration" then he goes on to say "the first part of the section condemns advocacy of such subversion or destruction; the last part condemns the attempt to incite, or abet, promote or encourage hostility or opposition, having in view the same subversion or destruction by force. Thus construed the statute only makes criminal the advocacy or the attempt to bring about the condition of what everyone would recognize as crime, though they might attempt to justify it as revolution. But revolution is a defense only when it is successful. The right of free speech cannot be properly construed to protect such an abuse of freedom."

So, construing the statute, he held it constitutional. He then was affirmed——

MR. HAMILL: He held that the law was constitutional?

THE COURT: As so construed. It was affirmed by the Court of Errors and Appeals in 108 Atlantic at page 318. There were two dissenting opinions, one of them by Justice Minturn of your fair county, and he expressed his vigorous dissent, particularly on page 320.

I am saying that so that in presenting your defense you may construe the statute in that way, if you will. We will adjourn now until 2 P. M.

(Adjourned to 2 P. M.)

AFTERNOON SESSION.

THE COURT: All right, go ahead, Dean.

MR. FRAZER: I have, if it please the Court, the list that I promised to give Mr. Hamill of industries in Jersey City (handing to Mr. Hamill).

MR. HAMILL: And you want me to agree to the propositions contained in this——

MR. FRAZER: In that carbon.

MR. HAMILL: Just initial them so that there will be no doubt about identification.

MR. FRAZER: All right.

AARON S. GILMARTIN, resumed.

By MR. FRAZER:

Q. Mr. Gilmartin, where have you gotten in your adventures?

A. I think I had gotten to the point where I said that after my arrest, or alleged arrest, and release I recrossed the street and rejoined the distributors.

Q. Will you go on from there.

A. I obtained some more leaflets from the distributors and started again to give out the handbills. A number of

plain clothed and uniformed policemen, in apparently concerted action, began to go systematically through the group of distributors, taking away from each one in turn the handbills which they possessed. The handbills which I had were so seized by a plain clothes man. We were herded by this group of officers in the direction of the ferry and told that we would have to take the ferry and go to New York. There were protestations from the entire group, many people saying that they did not live in New York and didn't want to be put on the ferry to go to New York. One of the officials, I don't know now whether it was a plain clothes man or a uniformed policeman, said, "Well, we have arrested some of your people. Now, why can't the rest of you behave?"

It was rather informally agreed that they wouldn't put us on the ferry if we would return to the union office. At least the group in which I was turned about without any opposition on the part of the uniformed or non-uniformed policemen, and returned to the union office at 76 Montgomery Street. There after a short time a number of us started out a second time with handbills. When I reached the vestibule on the ground floor of the building at 76 Montgomery Street, along with a number of these other people, we found that the revolving door was blocked on the outside by plain clothes men and uniformed policemen. The door was held in such a way that it would not go around, and we could not get out of the building. While we were held there, prisoners as it were, a number of cars drove up in front of the building, at least cars came up and stopped within the view that we had from the doorway of the building; whereupon the men stepped aside from the revolving door on the outside and, turning the door, beckoned that we could then come out, and one by one we were let out. I should say rather one by one the people started to go out, only one at a time. Each one, as he appeared on the opposite side of the revolving door on the sidewalk, was seized by these uniformed and plain clothes men, his literature, handbills were taken from him, he was frisked and searched,

and then led across the sidewalk and put into a waiting car, and after two or three were put into one that car drove off and another car pulled up. Seeing this happen a number of times, I, together with a number of others, decided that we would not go out in this way and just walk into the arms of the waiting officers. So we stood back in the vestibule of the building and just waited to see what would happen. When no more people went out of their own accord through the revolving door, the uniformed and non-uniformed officers came into the building through the revolving door themselves, and there started to frisk and search those of us who remained in the hallway. I was standing with Mr. Hertzberg. A non-uniformed officer approached him and took his literature away from him. Mr. Hertzberg asked for his identification, asked specifically if he could see his badge and get his number. The officer said, "Yes," but not wearing his badge, he made no move to produce it so that Mr. Hertzberg could see it. A few minutes later this same plain clothes man approached me, took my handbills from me. I asked the same question as Mr. Hertzberg had asked: "Where is your identification, your badge, as an officer?" After much searching of his pockets he produced a badge and I noticed the number, which was No. 102. Mr. Hertzberg and I were then both moved forcibly into position in front of the revolving door and in turn put through the revolving door, one of the non-uniformed policemen making the remark, "Why don't you act like gentlemen?"

Being put through the revolving door, we were handed over to a uniformed policeman who led us across the sidewalk to a waiting car, and Mr. Hertzberg and I were placed in the waiting car. The uniformed policeman wore the badge number 134. The car was driven by one man in the front seat and another man in plain clothes climbed into the rear of the car with Hertzberg and myself and we were driven away from in front of 76 Montgomery Street. Hertzberg asked the man with us where we were being taken? The man replied: "To headquarters."

I do not know Jersey City streets very well, but from appearances we traveled a rather circuitous route and finally drew up in front of a police station and were led into a room which was marked "Second Branch, Department of Detectives." There we were told to be seated, and we sat there for some fifteen or twenty minutes, while our abductors, or the men who were in the car with us, conferred with somebody in an inner office. After that delay, being held in the office of this Department of Detectives for about twenty minutes, we were then led out of this room and out of the building, onto the sidewalk, and again put into the waiting car. While on the sidewalk I saw Mr. Clendennin and a Miss Nancy Cox approaching the building, and I had the opport ity to announce to them in a loud voice that we didn't know where we were being taken nor what was happening to us. I was shoved rather forcibly into the car at that point and the car drove away. Again it had two men in it, two non-uniformed men, one driving, one in the back seat with us. We drove then for some time, finally through a park, and we were put out of the car on the other side of this park at what we discovered to be the corners of Communipaw and Marcey Avenues, which I believe is either at or near the boundary line of the Town of Kearny. At that point Mr. Hertzberg and I returned to 76 Montgomery Street for the primary purpose of obtaining our bags and to ascertain what had happened to the others in our group of distributors. When we arrived at 76 Montgomery Street we obtained our bags and went on to New York City.

Q. Was there any charge preferred against you?

A. No charge was ever preferred against me.

Q. You are a Harvard man, by the way, aren't you?

A. Yes, I am.

MR. FRAZER: Cross-examine.

MR. HAMILL: Have we a right to cross-examine him on the "Harvard man"?

THE COURT: I will be glad to have you and preside at the cross-examination.

MR. FRAZER: Cross-examine, Mr. Hamill.

MR. HAMILL: Joseph, I think you had better take charge of our friend.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Mr. Gilmartin, do you belong to any local, any union?

A. I belong to an organization which is called the Ministers' Union of America, which is affiliated neither with the American Federation of Labor nor the Committee for Industrial Organization.

Q. And why did you come to Jersey City on November 29th?

A. I came in my capacity as acting executive secretary for the Workers Defense League.

Q. Oh, you are acting executive secretary for the Workers Defense League?

A. I was at that time.

Q. Are you now?

A. I am not.

Q. And who asked you to come to Jersey City?

A. Nobody asked me to come.

Q. How did you know that they were going to distribute leaflets in Jersey City on November 29?

A. It was common knowledge in the newspaper that probably such a distribution would be attempted and I as part of my duties as acting executive secretary of the Workers Defense League came to Jersey City.

Q. Because of the fact that you read in the newspapers that someone was going to distribute circulars in Jersey City, on the morning of November 29, 1937, you came to Jersey City at six o'clock on that morning for the purpose of helping them distribute the circulars, is that right?

A. That is not exactly correct. I came because I had read of this distribution. I did not come knowing in advance that I would take part in the distribution. That de-

cision was made after I arrived and was at the office of the Shoe Workers Union.

Q. But you did take part in the distribution?

A. I did take part.

Q. And you knew at that time that there was an ordinance in effect in Jersey City?

A. I did.

Q. Prohibiting the distribution of leaflets and other literature?

A. I did.

Q. And knowing that, you came there for the purpose of distributing these leaflets?

A. As secretary——

MR. FRAZER: That isn't what he said. That is not the evidence. He said that he came there not knowing whether he would participate in the distribution or not.

MR. GLAVIN: All right. I will withdraw that question.

Q. You came there to give encouragement by your presence to those who were attempting to distribute leaflets?

A. I came as part of my duties as acting executive secretary of the Workers Defense League.

Q. Were you in sympathy with those who were distributing the leaflets?

A. I have no sympathy or antipathy to people who do those things which they believe are their rights. As acting secretary of this organization I am merely interested in protecting and defending the rights of workers and working class groups.

Q. Don't you go into the merits of whether or not they have the right to distribute leaflets before you lend your sympathy and aid to them?

A. I do.

Q. Did you in this case?

A. I did, and I believed that these people had a right to distribute circulars on the streets of Jersey City.

Q, And after you found out that they didn't have a right, by virtue of an ordinance in effect in Jersey City, prohibiting the distribution of leaflets, nevertheless you attempted to distribute them yourself, is that right?

A. That is right, because that is the only way we have been able to make such tests of these laws.

Q. And after you were stopped by someone whom you say was a plain clothes man, from distributing the leaflets, you asked to be arrested, is that right?

A. (No answer.)

THE COURT: Mr. Glavin, I don't want to again to be insistent about it, but I cannot understand your theory about this ordinance. It says no person shall distribute about any street. That, to my way of thinking, does not forbid your distributing from hand to hand.

MR. GLAVIN: Doesn't what? I didn't hear you.

THE COURT: Does not prevent your distributing from hand to hand. The ordinance, as I read it, clearly forbids littering of the streets.

MR. GLAVIN: Well, of course, our contention is that it does and the matter was tested in the courts of this state, and the courts have held that the ordinance was a reasonable exercise of the police power.

Now, of course, since the Griffin decision, we concede that the ordinance is not constitutional. This happened before the Griffin decision.

THE COURT: Was there a decision on it?

MR. FRAZER: There is no decision upon this section of the ordinance. There was a decision upon the second section.

MR. HAMILL: It was on the second section, but by implication the court has held the old ordinance good.

MR. FRAZER: Oh, that is a very different section. I think that section is probably good.

THE COURT: Might I have the citation of that case, Mr. Glavin? I won't bother you. Might I have the case?

MR. GLAVIN: I haven't got the citation.

THE COURT: Have you, anyone, got the citation?

MR. FRAZER: It is twelve, I don't know the name, but is 12 Miscellaneous, N. J. Miscellaneous; page 12.

THE COURT: 12 Miscellaneous?

MR. FRAZER: Page 12.

THE COURT: Will you get that? I think we have it somewhere.

MR. FRAZER: Let me have the opinion, Mr. Stoffer.

MR. STOFFER: Which one?

MR. FRAZER: In the certiorari. I can give it to your Honor in just a moment.

MR. STOFFER: Some copies are being made of it. Mr. Rothbard took it.

THE WITNESS: May I say——

THE COURT: I mean apart from the Griffin decision, which of course was not handed down at this time, I haven't been able to understand how the first section applies at all, and in the second place, how it could be tested otherwise than it was here tested.

MR. GLAVIN: Well, the ordinance, in the first section, says, "No person shall distribute or cause to be distributed or strewn about any street or public place any newspaper, pamphlet, circular," etc.

THE COURT: I don't believe anybody in the world would interpret that as anything but a littering of the street ordinance.

MR. GLAVIN: I can't agree with your Honor on that. The first part, the first section, "No person shall distribute or cause to be distributed or strewn about the streets"——

THE COURT: Then you have to say "about any street." If I were going to draft an ordinance, Mr. Glavin, which restricted distribution of pamphlets, I would say "on any street."

MR. GLAVIN: Of course,——

THE COURT: I don't want to argue too much about it.

MR. GLAVIN: This ordinance was drawn in 1924.

THE COURT: Yes. I think it is a proper police regulation ordinance about strewing the streets with waste paper.

MR. FRAZER: I think Section 2 is clearly good.

THE COURT: That is about households, isn't it?

MR. FRAZER: Yes, sir, ringing doorbells and things of that sort.

THE COURT: However, I don't want to limit your cross-examination, so go ahead.

MR. GLAVIN: Well, of course the direct examination is brought out by the complainants.

THE COURT: Nobody denies—at least, I consider it proved that these people went to Jersey City on this particular morning with the avowed and express purpose of testing both the applicability and the constitutionality of this ordinance.

Q. Well, Mr. Gilmartin, when you were stopped by a person whom you claim was a plain clothes man from distributing these leaflets, what did you do then?

A. Well, when I was stopped I was taken by this plain clothes man across the street, as I testified.

Q. And he said to you that you were under arrest?

A. For distributing circulars; that's correct.

Q. Yes. And subsequently he told you to move on, is that right?

A. That's essentially correct.

Q. And you insisted that you were arrested and you wanted to be taken to a police station?

A. I insisted that I had been told I was arrested and that I wanted to be taken to the police station, yes.

Q. And you actually did want to be taken to a police station, didn't you?

A. Yes; I believe in my right to be arrested if I violate a law.

Q. And you wanted to test that right, didn't you?

A. That is correct.

Q. And that was the reason why you came to Jersey City on that morning?

A. No, that isn't exactly correct. As I said before, I came because I knew from what I had read that such a distribution would probably take place. My participation was a decision of the morning itself.

Q. And after finding out subsequently that you were not under arrest, you went back to 76 Montgomery Street and procured some more of these leaflets for the purpose of going out and distributing those, isn't that right?

A. Well, I first returned to Bostwick Street and made another attempt at distributing leaflets before returning to 76 Montgomery Street.

Q. So in all you made how many attempts to distribute leaflets?

A. Three.

Q. Three attempts. And you did not succeed in any of those attempts in getting arrested?

A. I was told I was arrested but I was never booked or arraigned, to my knowledge. I was twice held in detention by people I assumed to be officers and plain clothes men.

Q. You only assumed that they were officers?

A. Well, they were plain clothes men.

Q. Well, how do you know they were plain clothes men?

A. Well, in one instance I saw his badge.

Q. In one instance. Do you know the number of the badge?

A. 134.

Q. 134?

A. No, I beg your pardon. The plain clothes man's badge was 102.

Q. 102. And did you see any other badges on any so-called plain clothes men?

A. No, no other plain clothes men that I asked to allow me to see their badges produced their badges.

Q. So that you don't know who they are, do you?

A. No, that is true.

MR. GLAVIN: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. You merely assumed they were plain clothes men on account of their association with other plain clothes men, is that right?

A. For that reason——

MR. GLAVIN: I object to what he assumed.

MR. HAMILL: I understood him to say he didn't know of them. His testimony is that he didn't know who they were, but he assumed they were plain clothes men, and merely called them such, but he doesn't know.

THE COURT: Well, as I understood him to say,—you were taken to the police station, weren't you?

THE WITNESS: I was taken to the police station by two of these men; in another instance one man told me that I was under arrest.

THE COURT: We are not in substantial disagreement about it. That's all, sir.

MR. FRAZER: Dr. Arons.

HARRY ARONS, called and sworn on behalf of the plaintiffs, testified as follows:

MR. HAMILL: May we have the name and address?

THE CLERK: Dr. Harry Arons.

MR. HAMILL: Did somebody say "Doctor"?

MR. FRAZER: That is right.

MR. HAMILL: Dr. Harry A-h-r-e-n-s?

THE WITNESS: A-r-o-n-s.

MR. HAMILL: A-r-o-n-s; and address, please.

MR. FRAZER: 717 High Street, Newark.

MR. HAMILL: 717 High Street, Newark. Thank you.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Doctor, you are a regularly licensed and practicing physician, are you?

A. I am.

Q. In this city?

A. State of New Jersey.

Q. And were you present on this occasion of the 29th of November, 1937?

A. I was.

Q. Will you tell me what your relation with it was, and what you saw.

A. I came into Jersey City with Mrs. Bell Rosenberg——

MR. HAMILL: Will you talk a little louder, Doctor, please?

A. (Continuing.) I came into Jersey City with Mrs. Bell Rosenberg in a car. We parked several blocks away from Montgomery Street and proceeded to walk to the Shoe Makers' headquarters at 76 Montgomery Street. When we

came in the vicinity of the headquarters we saw a group walking down the street, and we shouted to them, "Where are you going?" And someone in that group came back to us and said, "Where are you going?"

We said, "We are going to 76 Montgomery Street."

He says, "Follow me."

We asked him where he was taking us.

MR. GLAVIN: Of course, I object to this unless he can identify the person who he says spoke to him and asked him where they were going.

MR. FRAZER: He will, he will, he will.

MR. GLAVIN: Well, let him do it now.

THE WITNESS: All right.

MR. FRAZER: Let him tell his story, if you please, in an orderly way.

MR. GLAVIN: No, I object to his telling his story about some mythical person that told him to follow him, unless he can identify him.

MR. FRAZER: If the story is not connected up, it can be stricken out.

MR. GLAVIN: Well, I object to its being told and then stricken out.

THE COURT: Go ahead.

MR. GLAVIN: May I have an exception to your Honor's ruling?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. We asked him where he was taking us and he said, "You are going back to New York."

We asked him who he was and he said—he took out a wallet with a badge pinned to it and put it back into his pocket. Well, we told him we had our car—we were not from New York, we had our car parked back, and we would like to go back to our car. He says, "No, you are not." He says, "You are going back to New York."

And took us to the ferry, put us—took us to the ticket window. We paid our fare and went on to the ferry and went to New York.

Q. Who paid the fare?

A. We did. And——

THE COURT: Well, what sort of a badge was it?

THE WITNESS: I didn't look very closely. It was just a badge, and I was satisfied as long as he had a badge that he had some authority.

THE COURT: Do you always do what people with badges tell you?

THE WITNESS: Well, I didn't want to argue with the man. So after getting to New York we came back——

Q. Mrs. Rosenberg and you?

A. Well, this group; there were about five on the ferry. We came——

Q. Who else was in that group?

A. Well, all I know, Mrs. Rosenberg, myself, a Miss Bella Kussy—those are the only ones I recognized in this group; and we split up in New York and we came back by the Tubes, and I got off at Exchange Place. I walked out to the street and there I saw people distributing literature, and men in plain clothes and men in uniform pushing them around and taking the literature away from them, and leaflets away from them. After most of the leaflets were taken away, one of the men in plain clothes pushed some other—pushed some of the people who were distributing literature and said, "Get back to your headquarters."

MR. GLAVIN: I object to this, if your Honor please unless he identifies those people as police officers or as something. A man in plain clothes doesn't mean anything to me and I don't think it means anything to this court.

THE COURT: Yes, I agree. You must identify him.

THE WITNESS:: Well, he didn't wear any uniform.

Q. Were there any uniformed officers about the place at that time?

A. Oh, yes, quite a few.

Q. And what were they doing in relation to the plain clothes men that you speak of?

A. Well, they were taking literature away and looking on. The group that was distributing literature proceeded to the headquarters and I followed them across the street, and I went up to 76 Montgomery Street, the Shoe workers Local.

Q. Were you alone at that time?

A. Well, I was alone, yes. I went up there. After a discussion up there we came down again and we found the revolving door blocked, and I saw several people being taken out, put into cars, and I remained behind until there were no cars left, and one man frisked me and told me to get out and I went back to Newark.

Q. Now, did you say anything to the man who told you to go to New York, besides requesting to go back to your car?

A. No, that's all I told him.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. You are an M.D., Doctor?

A. Yes, sir.

Q. And a graduate of what college?

A. University and Bellevue Hospital Medical College.

Q. University of what?

A. Bellevue Hospital Medical College. It is N. Y. U. at the present time.

Q. Do you practice in Newark?

A. Yes.

Q. How did you come to go to Jersey City on November 29th?

A. Well, I am a member of the Newark chapter of the Workers Defense League.

Q. Oh, you are a member of the Defense League also?

A. Yes. We held a meeting and we were told that——

Q. Will you talk a little louder, please.

A. We held a meeting and we were told that the CIO was attempting, was going to attempt to distribute literature on that day, and volunteers were asked to act as observers and I volunteered.

Q. Well, where was this meeting of the Workers Defense League held?

A. It was held in Miss Kussy's house on Nairn Place.

Q. And who was present?

A. Miss Kussy, myself, Mrs. Rosenberg and I think a man by the name of Harry Mindelin, and several others; I don't remember exactly.

Q. Were they all members of the Workers Defense League?

A. Yes.

Q. Was Mr. Clendennin there?

A. No, he wasn't there.

Q. And who told you that this distribution was going to go on, on that day?

A. Well, the secretary announced—it was a rather informal meeting and the secretary announced that this distribution going going on.

Q. Who was the secretary?

A. Miss Kussy.

Q. Is she the secretary of the Workers Defense League?

A. In Newark, yes.

Q. Oh, in Newark. Is that affiliated with the Workers Defense League of which Mr. Clendennin is the national executive secretary?

A. It is.

THE COURT: Treasurer, I think he said.

MR. GLAVIN: Or treasurer. I beg your pardon.

Q. So that you volunteered to go to Jersey City on that day?

A. Yes.

Q. For the purpose of observing or for the purpose of distributing circulars?

A. Observing.

Q. Observing. But you became a participant after you arrived there?

A. I did not.

Q. Didn't you try to distribute any circulars?

A. I did not.

Q. And after you got there and got out of your car, somebody came up to you and told you to keep going, is that right?

A. He told us to follow him.

Q. To follow him. You don't know who that was?

A. No. He just showed me a badge, that's all.

Q. And you don't know what kind of a badge?

A. No, I do not.

Q. And the person was not in a uniform?

A. No.

Q. You followed without objection?

A. Well, we told him we had the car parked back and if we were going out of Jersey City we would rather go back to Newark where we lived, in our car.

Q. Yes; but you were not forced to follow this person, were you?

A. Well, he tugged me under the arm. I didn't put up any resistance.

Q. And you went to the ferry with whoever had you under the arm and bought a ticket or tickets for New York, and yourself and Mrs. Rosenberg in company with others went to New York?

A. I just paid for myself.

Q. Oh, you just paid for yourself. And then you came back in the Tubes and arrived at Grove Street?

A. I think it was Exchange Place that I got off.

Q. Exchange Place. And why did you do that?

A. I went upstairs.

Q. Upstairs where?

A. To the street.

Q. Yes; and what did you do there?

A. I just watched, looked around, to see what was happening.

Q. And what happened?

A. Well, I saw several—I saw people trying to distribute literature——

Q. Did you recognize any of the people that you saw?

A. I saw Mrs. Milgram, I recognized her, and I think Mr. Milgram. I recognized him. But there were several others and I didn't—I don't recognize—I don't recognize who they were.

Q. Then you went back to 76 Montgomery Street?

A. Yes.

Q. And after waiting there you went back to Newark?

A. Well, we went downstairs and of course as Mr. Gilmartin has said, we were stopped in the lobby, and several other people in the lobby were escorted out into waiting cars, and I remained behind until there were no cars present, and——

Q. And then you went to Newark?

A. And I was searched and they told me to get out.

Q. Is it your custom, Doctor, to go around any place that you hear that they are going to distribute literature or circulars and observe?

A. No, it is not my custom.

Q. Is that the first time that you did it?

A. Yes, this is the first time.

Q. Did anyone in particular induce you to come to Jersey City on that day?

A. No, I went of my own free will.

Q. You went of your own free will.

MR. GLAVIN: That is all.

MR. FRAZER: That is all, Doctor. Miss Kussy.

THE COURT: Might I suggest, Mr. Frazer, that we have had enough of this observer testimony. If you have any more distributors, I should think they would be much more relevant to the issue.

MR. FRAZER: Well, there are certain features which I think have not been stressed, for which I was calling these witnesses, and that was the actual deportation.

THE COURT: Each observer has told exactly or substantially, at least, the same story as the ther observers.

MR. FRAZER: This is the first one, I think, if your Honor will recall, who was actually put upon a ferryboat and sent across.

MR. GLAVIN: Oh, I object to that statement. He was not put on a ferryboat. He bought a ticket and got on himself.

MR. FRAZER: He was taken by a policeman with a badge, under the arm, and taken up to the ferry to New York.

MR. GLAVIN: I object to Mr. Fraser, every time a witness testifies, commenting and putting his idea of what the witness testified to in the record.

MR. FRAZER: Well, if that is not the testimony, it is not binding on the Court in any way.

Under the circumstances I would like to call Miss Kussy.

THE COURT: All right.

BELLA KUSSY, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

MR. HAMILL: Name and address, please.

THE CLERK: Bella Kussy.
What is the address?

THE WITNESS: 30 Nairn Place, Newark.

THE CLERK: 30 Nairn Place, Newark.

Q. And Miss Kussy, you went over to Jersey City on the morning of November 29, 1937 and in whose company?

A. I went with Milton Arons, Jerry Ben Asher and Mrs. Helen Jungfer.

Q. And what time did you get over there?

A. We went by car from Newark and got into Jersey City about 7:10 or 7:15.

Q. And will you say what happened to you when you got there?

A. Well, as we passed the City Hall we noticed several cars in front, filled with plain clothes men——

MR. GLAVIN: I object to that and move that it be stricken out on the ground that she doesn't know what a plain clothes man is, and cannot identify them as plain clothes men or anything else.

THE WITNESS: Well——

MR. GLAVIN: Just a minute.

THE WITNESS: Oh.

THE COURT: Ask her what identification she has.

Q. How do you know they were plain clothes men?

A. Well, they looked like gangsters, but gangsters wouldn't be parked in front of the City Hall.

MR. GLAVIN: Perhaps they were members of the CIO, then.

THE COURT: That is not a sufficient identification.

A. (Continuing.) Well, cars filled with men who were looking out of the window, surveying the streets, and——

MR. GLAVIN: I move that her testimony be stricken.

THE COURT: I will strike it.

Q. Did you subsequently see these men?

A. Well, I couldn't identify them.

Q. All right.

A. But——

Q. What happened to you?

A. We parked the car several blocks away from 76 Montgomery Street, about a half a block into a side street. We got out and walked to Montgomery Street and started off in the direction of the union office, and when we had gone about half a block, two men came—one from each side of the street—and converged towards us and stopped us. One of them said, "I am a police officer"——

MR. GLAVIN: Just a minute. I object to what he said unless she identifies him.

MR. FRAZER: She is identifying him now.

MR. GLAVIN: Well, let her identify him first.

MR. FRAZER: She said, "I am a police officer."

MR. GLAVIN: She didn't say anything about a police officer.

THE COURT: I thought she did. Read it.

MR. FRAZER: I beg your pardon. You were talking so much you couldn't hear what she said.

THE COURT: Will you read it, please?

(Repeated by the reporter.)

THE COURT: All right.

A. (Continuing.) He asked us if we had business in Jersey City. Mr. Arons said, "Yes," we had. He asked us what business, Mr. Arons said, "We are going to a meeting." The man said, "What meeting?"

And Mr. Arons said: "CIO."

So the other man said, "Take them to the ferry."

They pointed in the other direction. We turned around, and the two men, the police officer and the other man, walked along with us. When we passed the street where we had come out, we saw Dr. Arons and Mrs. Rosenberg some distance behind us, and they followed us in the distance, and when the police officer saw them following us, he went back and walked with them, and escorted them after us. On the way to the ferry we were joined by Beatrice Fox who didn't know that we were being taken to the ferry, and wanted to go to the union office with us. All of us were taken to the ferry and compelled to pay our own fare and to get on the ferry. On the ferry we noticed a man who was watching us all the time and who did not get off at the other side, but stayed on the ferry and rode back to Jersey City.

MR. GLAVIN: I object to that on the ground it is immaterial and move it be stricken out.

THE COURT: Strike it.

MR. FRAZER: It is a statement of a fact.

MR. GLAVIN: There might have been a lot of people on the ferryboat that didn't get off.

MR. FRAZER: It is one which is subject to inference. I don't see that there is anything objectionable about it in any event. Maybe she saw a baby carriage on the boat. It is not objectionable.

MR. HAMILL: It might have been the young lady's beauty that caused the gentleman to look at her all the time.

A. (Continuing.) Well, he also went back to Jersey City. After we got off the ferry we decided to try to go back separately so we separated. Miss Fox and I went by Tubes and got off at Grove Street, and took a cab to the union office. We got into the union office without any difficulty, and the woman in charge told us that the distributors had gone out but would not permit us to go after them, since they did not want——

MR. GLAVIN: I object to what the woman told her about what had happened.

THE COURT: Just tell us what she did.

A. (Continuing.) Well, she kept us at the office until, in a few minutes, the distributors came back. A meeting was held in the office at which it was decided to go down and find out what had become of the people that had been taken away by police, and also to distribute more circulars, but when we got to the door it was blocked and finally the police were outside, finally one person at a time was searched, let out and put into the cars, but I was among the very last people to come out, and there were no more cars, so I was left standing on the sidewalk with Miss Fox and Mrs. Milgram. After everyone was gone we stood around, talked to reporters, and made a phone call, and then decided to go to the police headquarters and find out what had happened. When we got there we met Mr. Clendennin, Miss Cox and two or three other men, who told us they had not been able to find out what had happened, but Mrs. Milgram went in to inquire because her husband was among those missing, and she thought she might be informed on those grounds. Finally we were admitted to the court room, and I was present during the trial. After the trial I was also present when Mrs. Milgram was promised by a police officer that——

MR. GLAVIN: Just a minute. I object to what Mrs. Milgram was promised.

Q. By a police officer?

A. We were prevented from seeing the defendants on the grounds that they had been transferred to the County Jail, and we went to the County Jail and tried to see them there, and were told it was too late in the day. So we went back to Newark.

Q. Did you distribute any pamphlets yourself, any leaflets?

A. No, I didn't distribute them. I was an observer.

Q. Did you have any in your possession at any time?

A. No.

Q. Did you know the number of the policeman that escorted you?

A. No, I did not.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. You didn't know that it was a policeman, did you?

A. Well, he told me he was. I had no further identification.

Q. You didn't ask him to see his badge?

A. No, I didn't.

Q. And you didn't see any badge on him?

A. I don't think I saw any badge.

Q. If anyone in this court room told you that he was a policeman would that satisfy you that he was a policeman?

A. No, I don't think so.

Q. Well, then, you didn't know whether this man who accosted you was a policeman or not, did you?

A. Well, I had no way of knowing, except that he identified himself as a policeman.

Q. And you were not searched at 76 Montgomery Street, were you?

A. No, but I saw all the people around me searched.

Q. Just answer the questions, please, don't volunteer.

A. I was not searched, myself.

Q. And you didn't attempt to distribute any circulars at all?

A. No.

Q. And you paid your own fare when you got on the ferry?

A. Yes. I didn't think it was wise to object——

Q. Never mind what you thought.

MR. GLAVIN: I move that that be stricken on the ground it is not responsive.

Q. You did pay your own fare?

A. Yes.

Q. And went to New York?

A. Yes.

Q. Because two persons who were dressed in plain clothes told you to follow them and their course led to the ferry?

A. They didn't tell me to follow them. One of them stood on each side of the group and they made plain that they were going to see to it that we got on the ferry.

MR. GLAVIN: Now, I object to that. I move that it be stricken, what they made plain.

Q. They suggested that you go to New York?

A. They instructed us to go to New York.

Q. And you went?

A. Yes.

Q. Now, are you connected with the Workers Defense League?

A. Yes, I am secretary of the Essex County branch.

Q. And how did you find out that the CIO or someone else was going to distribute circulars on November 29th in Jersey City?

A. Well, I had read about it in the newspapers and also a number of our members who came to the Workers Defense League meetings were members of the CIO.

Q. And who told you to go to Jersey City?

A. No one told me specifically, but our members who were CIO organizers told us that volunteers were invited, and we had a representative at the CIO meeting, which was informed of the distribution.

Q. Your organization then is connected with the CIO, isn't it?

A. No, it is not affiliated with the CIO.

Q. But your members are members of the CIO?

A. Not necessarily.

Q. But you have members of your organization who are members of the CIO, isn't that right?

A. Yes, we have some.

Q. Yes. And you decided that because you had read in the papers and because some of your members who were also CIO union men advised you that they were going to distribute leaflets in Jersey City on November 29th—is that right?

A. Yes.

Q. And did they tell you or did you know that there was an ordinance in effect in Jersey City prohibiting the distribution of circulars?

A. Yes, I think I did.

Q. You knew that. Nevertheless you decided to come and help and encourage by your presence the violation of that ordinance?

MR. FRAZER: I object. I object to the designation of her conduct.

THE COURT: I don't want to seem impatient but I must say I am getting a little tired of that questioning, Mr. Glavin.

MR. GLAVIN: Of course, the Court may be tired of it, but I am tired of a lot of questions that are being asked on direct examination, but there isn't anything I can do about it.

THE COURT: The reason I say I am tired of it, Mr. Glavin, is that the facts are all conceded. They went

there for the purpose of testing the ordinance. I just within ten minutes made that remark.

MR. GLAVIN: Well, of course, those observers didn't come for the purpose of testing the ordinance.

THE COURT: To observe the test.

MR. GLAVIN: They went for the purpose of encouraging those who were going to make the test.

THE COURT: To observe the test; to observe the test.

THE COURT: All right. That's all.

MR. FRAZER: That's all.

SOL CHERNOFSKY, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: Where do you live, Mr. Chernofsky?

THE WITNESS: 184 Matthew Street, Orange.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. What is your business, Mr. Chernofsky?

A. I am an organizer for the United Laundry Workers Organizing Committee.

Q. And a member of that union?

A Yes, sir.

Q. Were you over there on the 29th of November?

A Yes, sir.

Q. What happened to you or what did you see?

A. I drove into Jersey City with my car at about seven o'clock and parked my car directly in front of 78 Montgomery Street. A policeman was standing directly opposite 78 Montgomery Street, beside the building where the meeting was supposed to have taken place.

I went into that room, the meeting. There was a meeting in progress and by mutual consent it was decided to go

two by two down to the Harborside Building in order to try to distribute circulars.

We went down there in order to see if we could get some of our old workers in order to go to the various places in that area to circularize them.

Q. What happened?

A. When we got down as far as Exchange Place, which is at the site of the Harborside Building, a number of policemen, mingling with plain clothes men, pushed us toward the ferry. However, none of us who were in that crowd wanted to go to New York City.

MR. GLAVIN: I object. He does not know what any of them wanted to do.

Q. Did you want to go to New York City?

A. No, sir, I didn't want to go to New York City and I refused to go on the ferry. We mingled together, we were pushed as one solid group to the ferry. After some hesitation quite a number of policemen and plain clothes men came around and picked certain of the group out and put them under arrest. I was one of those arrested. I asked the officer, who was a plain clothes man—I didn't see his badge——

MR. GLAVIN: I object. Will Mr. Frazer ask him if he can identify him as a police officer or anything else?

Q. What did he do to you?

MR. GLAVIN: I object to what he did to him or what he said to him unless he can identify him as something.

MR. FRAZER: This seems to me to be quite ridiculous.

MR. GLAVIN: It has been ridiculous all along.

MR. FRAZER: A group of men mingling with police officers and joining in their operations, to say that because they appear to be in plain clothes, what hap-

pened in a melee of that kind cannot be told by a witness.

MR. GLAVIN: It certainly cannot bind these defendants, what somebody in plain clothes did at a scene where there were probably one hundred people, if he cannot identify them.

THE COURT: I think this is getting a little unreal, Mr. Glavin. Nobody denies that the police at that particular point and on this particular day prevented the distribution of these pamphlets.

MR. GLAVIN: Nobody has admitted it either, if your Honor please.

THE COURT: But it is not denied.

MR. GLAVIN: We have not been called upon to admit it yet.

THE COURT: There is some evidence to that effect, and no evidence to the contrary.

MR. GLAVIN: We have not had a chance to put it in yet.

THE COURT: I will ask you flatly, do you deny it?

MR. GLAVIN: I don't know whether we deny it or not. We are here to meet the testimony that is produced on behalf of the complainant. And that we intend to do at the proper time.

THE COURT: I have always understood that the Court was entitled to ask counsel whether they deny the facts or not. If you do not care to answer it——

MR. GLAVIN: The police attempted to enforce the ordinance, according to their lights, the way the ordinance should be enforced.

THE COURT: I am not expressing any opinion, Mr. Glavin. All I am asking you is whether you deny this fact.

MR. GLAVIN: I certainly deny a lot of facts that were testified to here.

THE COURT: But the fact that they prevented the distribution of handbills.

MR. GLAVIN: I don't know that that will be denied, but nevertheless I do not think that it is proper for this witness, as a lot of other witnesses have done, to testify that someone in plain clothes, whom they cannot identify either as police officers or by name or anything else, did certain things to them. How can that possibly bind the defendants in this case?

THE COURT: Frankly speaking, Mr. Glavin, it does not particularly interest me, the fact being that the police held certain defendants in court and whether there was a record made of their arrest for distributing these handbills, I do not know——

MR. FRAZER: This is one of the actual men who was arrested and held for the Grand Jury.

THE COURT: Let's go to that then.

Q. Go ahead, what happened

A. Well, this particular officer—one particular officer in plain clothes arrested me and he took me to a car, a coach, where two others beside myself were placed in that car. I had asked the officer why he was arresting me and he told me for distributing circulars. I told him I had not distributed one circular, although I did have circulars in my hand.

We were brought to a precinct and we were placed in a room. We were in that room from seven-thirty to about twelve forty-five. We had continuously asked to have some lunch. We were denied. Finally at twelve forty-five we were taken into the court room. Shall I proceed?

MR. FRAZER: Yes.

THE COURT: Was he one of the five defendants?

THE WITNESS: No.

MR. FRAZER: No.

THE COURT: What was his status?

MR. FRAZER: He is one of the group that was held for the Grand Jury for unlawful assembly, I think. We have no transcript.

MR. GLAVIN: That, of course, is a matter of record.

THE COURT: I don't know whether it is or not. We have had difficulty with the record. Is that a matter of record?

MR. GLAVIN: The fact that they were held for the Grand Jury is certainly a matter of record in the court that they were held in, and the court that they were held for.

THE COURT: You ought to produce the record.

MR. HAMILL: The papers were sent to the Grand Jury.

THE COURT: They are available somewhere.

MR. HAMILL: Oh, yes. I imagine you can get them from the Prosecutor's office.

MR. FRAZER: Would you like to bring over from Hudson County for me?

MR. HAMILL: You have asked me to do a lot of things and I want to be complaisant, and even obliging, but don't put any more on me than you think you ought to.

Q. Well, you were arrested and taken to jail. Were any charges preferred against you?

A. There was a—Well I had asked the officer what charge.

MR. GLAVIN: I object. If he knows the charge made against him, he ought to state it.

Q. You asked the officer whether you were—what you were arrested for?

A. Yes, sir.

Q. What did he say?

A. Distributing literature.

Q. Yes.

A. Then when we got to court room we found that we were arrested for unlawful assemblage, that is, the seven of us who were placed in that particular vicinity, under arrest.

Q. What did you do then, you?

A. Well the group of us, we were held for one thousand dollars bail. During the court procedure I believe somebody told the four—if you wish me to continue about the court procedure?

Q. No. Who were the other persons who were held with you, do you know?

A. Samuel Macri, Morris Milgram, Walter Barry and three others, I don't know the other's names.

Q. Did you actually post bail?

MR. GLAVIN: I object, immaterial, whether he actually posted bail or not.

THE COURT: What does the record show about that? Did you ever go to jail?

THE WITNESS: I did, for one day. During the particular period our attorney—during the trial period our attorney——

MR. GLAVIN: I object to what his attorney was doing during the trial period.

THE COURT: Sustained.

A. Well, we were taken to the county jail.

MR. GLAVIN: May I object to this witness just going on rambling. If Mr. Frazer wants to ask him questions let him ask them.

MR. FRAZER: I have asked him what he did and counsel is continuously interrupting him.

MR. GLAVIN: But I object to his testifying to what went on in a police court——

THE COURT: I have not allowed him to testify to what happened to the others. What happened to you personally?

A. Well, I was held for one thousand dollars bail. I was taken up to the headquarters where I was fingerprinted, my picture taken and then we were taken to the county jail and at the county jail——

MR. GLAVIN: I object on the ground it is immaterial what happened in the county jail. The only thing that is material is the fact that he was arrested.

THE COURT: Then were you released on bail?

THE WITNESS: I was released on bail the very next morning.

THE COURT: What happened to your case?

THE WITNESS: The case still is pending in the Grand Jury.

Q. What happened to your car which you left in front of 78 Montgomery Street?

A. I had continuously told the policeman who had arrested me and was there at the jail that——

MR. GLAVIN: I object.

THE COURT: Please don't say what you told him. You were asked by your counsel what happened to your car.

A. Well, my car was parked in front of 78 Montgomery Street. When I finally went to recover it it was found at 88 Montgomery beside a fire hydrant with a ticket on it with the following charges——

MR. GLAVIN: I object to this testimony on the ground that it has nothing to do with these witnesses.

MR. FRAZER: Oh, yes, it is part of the——

MR. GLAVIN: May I not make my objection without interruption? On the ground that it has nothing to do with the defendants, it is not binding upon them, what happened to his car. He was not in his car when he was apprehended, and unless he can prove that one of these defendants moved his car or did something else with it, it is not material in this case.

THE COURT: Who made the charges on the car against you, do you know that?

THE WITNESS: I don't think so, I didn't look at the ticket very carefully.

Q. You didn't look at the ticket?

A. I looked at the ticket, yes, Judge, but not at the officer's name.

THE COURT: What happened to the charge?

THE WITNESS: I paid the fine.

THE COURT: Where?

THE WITNESS: At the police court in Jersey City.

THE COURT: Who was the complaining witness?

THE WITNESS: There wasn't any.

THE COURT: Did you protest against paying the fine?

THE WITNESS: I did not. I thought it was best to just pay the fine.

Q. What were you charged with?

MR. GLAVIN: I object to it on the ground it has nothing to do with this case.

THE COURT: Mr. Frazer, you might infer that. was moved by the police, but after all inferences a not good evidence. I will strike the evidence out.

MR. FRAZER: May I say to your Honor, before stri ing the testimony out, an inference is something whi may be drawn——

THE COURT: Mr. Frazer, we have to be bound b the rules of evidence.

MR. FRAZER: I would like to ask one question this witness as to whether he informed, when he w taken into custody, the police officer, who took him in custody, that his car was there.

MR. GLAVIN: I object on the ground it is imm terial what he informed them.

THE COURT: He said he didn't protest the movi of his car, therefore we are lacking in proof. He pa his fine and that is all there is to it.

MR. FRAZER: Exception.

THE COURT: You may have it.

(Which exception was duly allowed and sealed a cordingly.)

(Seale

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Mr. Chernofsky, you are an organizer for the Unit Laundry Workers Union?

A. Organizing committee.

Q. Organizing committeeman?

A. No. Committee.

Q. And is that an affiliate of the CIO?

A. An affiliate of the Amalgamated Clothing Worke of America, which is affiliated with the CIO.

Q. Where is the office of the United Laundry Workers Union located?

A. 172 Broad Street, Newark.

Q. Is there a local located in Jersey City?

A. At the present time we have space there, office space. There is no local established in Jersey City.

Q. Was there one on November 29, 1937?

A. There was not.

Q. How did you learn of the fact that leaflets were going to be distributed in Jersey City on November 29th?

A. Other organizers had told me about the distribution.

Q. Who were the other organizers that told you about the distribution?

A. That I cannot recall.

Q. You do not recall who they were?

A. No, sir.

Q. You do not recall any of them?

A. I do not.

Q. And how did you come to decide to come to Jersey City?

A. Well, I am interested in laundry workers, no matter what part of the state they are in. It is a duty of mine to try to organize laundry workers. We have organized quite a few in Jersey City.

Q. But there were not any laundry workers interested in this movement, were there, Mr. Chernofsky?

A. I happen to be a laundry worker.

Q. Do you know whether there were any laundry workers in Jersey City that were interested in this movement on the part of the CIO to distribute literature in Jersey City?

A. They themselves——

Q. Now, just a minute, will you answer the question without a speech? Just say yes or no.

A. Will you ask me the question again?

MR. GLAVIN: Will the stenographer repeat the question?

(Repeated by stenographer.)

A. We have some members in Jersey City who are interested in the distribution of literature, yes.

Q. Who are they?

MR. FRAZER: Oh, I object to that.

THE COURT: How many laundries are there in Jersey City?

THE WITNESS: There are approximately about eighteen.

THE COURT: How many people do they employ?

THE WITNESS: They employ about 12,500 workers.

THE COURT: Are any of them members of any union?

THE WITNESS: There is one laundry in Jersey City who had a union contract with the American Federation of Labor.

THE COURT: What laundry was that?

THE WITNESS: I think it was the Sunshine Laundry.

THE COURT: They have a local, is that it?

THE WITNESS: They have their own local, yes, sir.

THE COURT: And are the other laundries unorganized?

THE WITNESS: Yes, sir, excepting for company unions.

Q. Did any laundry or any laundry worker in particular in Jersey City request you to come to Jersey City on November 29th?

A. Not the workers in Jersey City requested me, but my particular union members did.

Q. And you came over in an automobile, is that right?

A. That is correct.

Q. And you arrived at 76 Montgomery Street about what time?

A. Seven A. M.

Q. Six o'clock in the morning?

A. Yes.

Q. And you went to a meeting at 76 Montgomery Street?

A. That is correct.

Q. And was that a meeting of the United Laundry Workers Union?

A. No, it was a meeting of the various organizers and sympathizers with the CIO cause.

Q. And from there you left with the intention of marching two by two, down Montgomery Street to the Harborside Warehouse?

A. That is right.

Q. Are there any laundries located at the Harborside Warehouse, to your knowledge?

A. No, sir, there is not.

Q. And from there what happened to you when you got down to the Harborside Warehouse?

A. When we got down to the Harborside Warehouse——

Q. When you got there.

A. We had nothing else to do but——

Q. Just a minute, not what you had to do, what you did.

A. We did nothing because we were forced to do it——

MR. GLAVIN: I move to strike it out on the ground it is not responsive.

Q. What did you do?

A. Well we——

Q. Use the first person, please.

A. Why, we got down with some other organizers for the purpose of—from there we went to——

Q. Did you hear the question?

A. I certainly did.

Q. I say what did you do when you got to the Harborside Warehouse?

A. Well, we just stayed there.

Q. You just stayed there?

A. That is right.

Q. And after staying there what did you do then?

A. Well, in company with the policemen I went to the precinct where I was arrested.

Q. Well, did you distribute any literature?

A. No, yes.

Q. Did you have any with you?

A. Yes, sir.

Q. Did you attempt to distribute them?

A. Well I would have attempted——

Q. I didn't ask you that. Did you attempt to distribute any literature?

A. It was too early in the morning, there were not very many people around.

Q. Mr. Chernofsky, that question calls for a yes or no answer. Did you attempt to distribute any literature?

A. Yes.

Q. All right. And how many people were with you, in your immediate company, when you were arrested?

A. There was approximately in the crowd about forty-five or fifty.

Q. About forty-five. Then you were taken—after you were arrested and arraigned and held for the Grand Jury, you were taken to the county jail, is that right?

A. That is correct.

Q. And you remained there for one day?

A. That is right.

Q. Then you went back to Orange?

A. I went back to get my car.

Q. You went back to get your car and you went back to Orange?

A. That is right.

MR. GLAVIN: That is all.

THE COURT: While you are waiting, Mr. Frazer, I will ask the witness a question: did you attempt, or have you at any time attempted to distribute literature to laundry workers in Jersey City?

THE WITNESS: Yes, sir, I did.

THE COURT: When was that?

THE WITNESS: I attempted to distribute literature in front of the Lackawanna Laundry in Jersey City about three weeks previous to the general distribution that we tried.

THE COURT: Have you got a copy of the literature you attempted to distribute there?

THE WITNESS: I think I have.

THE COURT: Will you produce it?

THE WITNESS: I will bring copies. We have them on file.

THE COURT: What happened then?

THE WITNESS: Well there was——

MR. GLAVIN: As Mr. Hamill said this morning, your Honor, we do not question the Judge's right to ask questions——

THE COURT: You have a right to take exception. I disagree with Mr. Hamill. You have a perfect right to question my questioning, Mr. Glavin.

MR. GLAVIN: I don't think that this is material, and I think that it should not be in the record.

THE COURT: I should not have asked it so broadly.

MR. GLAVIN: There is not any allegation in the bill of complaint that it is in support of and certainly

nothing has been produced by the complainants with respect to any distribution other than on November 29th.

THE COURT: Is that correct? I don't question your word, Mr. Glavin.

MR. FRAZER: Well, of course, we do allege interference with labor activities. That is a perfectly good allegation under which the Judge's question could be supported.

THE COURT: My question was too broad. Was there any interference with your activity?

THE WITNESS: At that time no, none whatever.

MR. GLAVIN: I withdraw my objection, if the Court please.

MR. FRAZER: That is all, Mr. Chernofsky.

(Witness excused.)

MORRIS MILGRAM, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. What is your address?

A. 138 Baldwin Avenue, Jersey City.

Q. What is your business, Mr. Milgram?

A. I am secretary of the Workers Defense League of New Jersey.

Q. Did you have occasion to be in Jersey City around 76 Montgomery Street on the morning of the 29th of November?

A. I had.

Q. What happened to you, what did you see?

THE COURT: Is he one of the defendants in this case of the circulars?

THE WITNESS: I am.

THE COURT: Then do we need anything more than that fact?

THE WITNESS: I was one of those held for the Grand Jury.

MR. FRAZER: He is held for the Grand Jury on the charge of unlawful assembly.

Q. Is that it, Mr. Milgram?
A. That is right.

MR. FRAZER: Now I would like to show what happened to him, in the line of attack by officers.

THE COURT: Well, briefly.

MR. GLAVIN: Do I understand Mr. Milgram is supposed to be one of the plaintiffs in this case?

MR. FRAZER: No, one of the defendants on the charge made, and held for the Grand Jury.

Q. State briefly what happened to you, Mr. Milgram.
A. Well, I walked with a group of about forty people to the Harborside Building and distributed leaflets. I was walking with my wife. An officer came up to her some time after Mr. Barry, Mr. Macri and Mr. McGinn had been arrested and the officer took her by the arm and started to walk away with her when a gentleman, not in uniform, ordered the officer——

MR. GLAVIN: I object, immaterial, what a gentleman not in uniform did.

THE COURT: Did the officer obey the order?

THE WITNESS: The officer obeyed the order, yes. He told the officer, "I don't want the girl, I want the man."

MR. GLAVIN: I object what he told the officer and move to strike it out.

THE COURT: What did the officer do?

THE WITNESS: The officer let go of my wife and he and another officer took hold of me, and the second officer, whose badge number was 82, walked with me to a car parked nearby and with several other people I was taken to the police station. During the course of the proceeding before Judge Botti——

MR. GLAVIN: I object to what happened before Judge Botti.

THE COURT: Yes, sustain the objection.

MR. FRAZER: He is not testifying to what happened as part of the court proceeding——

THE COURT: No, I wanted to testify to something that was outside of the legal court procedure that occurred.

MR. FRAZER: If I ask him the question you will say I am leading him; I am asking him to tell the story.

MR. HAMILL: If you put the question "what happened," I won't object.

Q. Will you proceed?

A. Yes. I was standing right in front of Judge Botti's desk, taking notes of the proceeding, because I had heard that no official stenographic record was being permitted——

MR. GLAVIN: I object, hearsay, what he heard.

THE WITNESS (Continuing.): Whereupon a police officer came up to me and attempted—and took my note-book. The attorney, Mr. Kopelsohn pointed this out to the Court and I was permitted to continue taking notes.

After the proceedings before Judge Botti ended all the defendants were taken inside and their property was taken from them.

MR. GLAVIN: I object unless he was there and saw it.

MR. FRAZER: He was one of the defendants.

THE WITNESS: My property was taken from me——

MR. GLAVIN: Just a minute.

THE COURT: He is only talking about himself now.

MR. GLAVIN: He said all the defendants, and that their property was taken from them.

THE COURT: He is only telling what happened to him.

THE WITNESS: My property was taken from me, including my note-book, which had my notes in it, and a person who was addressed as sergeant by the Court and who had badge number 16 then seized my note-book and tore out of it all the pages that had writing. I demanded that they be returned and I called to officer number 82 who was standing nearby, to witness what I termed the theft of my property, and he would not do anything. All my protestations did not succeed in getting back those pages and when my property was put into an envelope to be sealed, those pages were not inserted in the envelope. They remained in the possession of officer number 16.

Q. Were they returned to you when your property eventually was given back to you?

A. They were not returned to me and I made a note of that on the envelope which I had to sign to get my property back.

Q. How long were you in jail?

A. I was in jail until about noon of the day following the arrest.

Q. And you were arrested at what time?

A. About seven thirty a. m. on November 29th.

Q. Now, did you have any other experience, or do you recall the occasion when Mr. Norman Thomas came to Jersey City to speak?

A. Yes, I do.

Q. Were you present at Journal Square on that evening?

A. Yes, I was.

MR. GLAVIN: I object to any testimony concerning anything that happened subsequent to the filing of this bill, on the ground that it is not within the four corners of the bill and is certainly not part of the proof in this case.

THE COURT: I have permitted the amendment.

MR. GLAVIN: Then I plead surprise and ask for time to answer any allegations that may be added to the bill.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. Will you say what happened to you that night, what you saw and what happened to you?

A. As Mr. Barry, Norman Thomas and others drove into Journal Square I was on the edge of a crowd assembled on Journal Square in front of the telegraph office. I tried to clear some space so that the car could drive in and I walked rapidly with the crowd as the crowd shouted: "Hurrah for Norman Thomas" when he drove into the Square. I was struck on the side of my eye, my glasses were——

MR. GLAVIN: I object unless he can identify who struck him.

THE WITNESS: I can identify the person.

Q. Who struck you?

A. I was struck by officer number 191.

Q. What was the blow he gave you?

A. It was a blow of his fist that threw my glasses to the ground and broke them and left a scar that I still bear

beneath my eye. I fell to the ground dazed and as I tried to get up I was struck on the back of my head with a club, wielded by the officer.

MR. GLAVIN: The same officer?

THE WITNESS: It was officer number 191. Then I got up and saw Norman Thomas being pushed into a car about fifteen or twenty feet away and driven off.

Q. By policemen? Who was putting him in?

A. There were numerous policemen as well as men in plain clothes all around holding him. I got up and I walked with the crowd going to the police station.

Q. What was the date of this meeting?

A. April 30, 1938.

Q. And had you read the Griffin decision, the United States Supreme Court?

MR. GLAVIN: I object, unless he is a lawyer. What difference does it make?

THE COURT: Sustain the objection.

MR. FRAZER: I wish to show that this was an operation which occurred after the Griffin decision when the United States Supreme Court said the distribution of pamphlets was proper. I am about to come to the point that he was attempting, that evening, to distribute pamphlets.

Q. Is that a fact?

A. That is a fact.

MR. GLAVIN: Are you going to tell him what he was doing?

THE COURT: Yes, I think you ought to ask the question first.

MR. GLAVIN: I move to strike what happened to him.

THE COURT: What pamphlets were you distributing that night?

THE WITNESS: That night as I was—I had some pamphlets in my pocket and as I recall it they were of various kinds.

THE COURT: Did you try to distribute them?

THE WITNESS: Yes, I distributed a few.

Q. Then what happened to you?

A. On that occasion I was prevented by a police officer whose name I do not recall, I have it written down at home. He took me over to another officer asking whether he should hold me and the other officer told him to release me. I then went to my house and later that evening——

Q. Did they take the pamphlets from you or did they leave them with you?

A. He left them with me, but only after I argued with him and told him about the Griffin decision. I was well acquainted with the Griffin decision because my organization had——

MR. GLAVIN: I object to the legal interpretation of the Griffin decision by this man or his organization.

THE COURT: Yes.

THE WITNESS: That evening I went again to Journal Square with Darrell O'Neil, the Hudson County secretary of the Workers Defense Union, and I was carrying my brief case and he was carrying leaflets. Those leaflets were distributed by him for about a moment at Journal Square and they were seized by police officers and he secured a few more leaflets from me and continued to distribute them, and at that time several police officers and men in plain clothes who worked in co-ordination with these police officers emptied my brief case.

MR. GLAVIN: I object to any testimony concerning men in plain clothes.

THE COURT: Yes, you will have to identify them.

A. These men, as well as police officers in uniform, emptied my brief case and they threw Darrell O'Neil and myself into a police car and threw into the car on top of us two young ladies that were passing by.

Q. Had they been distributing circulars, too?

A. They had not. We were driven away with four other men in the car, and of those four two were in uniform and two were not. The policeman who was driving the car would not tell us where we were being taken. I claimed we were being kidnapped if we were not being told where we were being taken.

MR. GLAVIN: I object to what he claimed.

MR. FRAZER: This is all part of the picture.

THE COURT: Yes.

A. (Continuing) One of the men who did not wear a uniform and who is unknown to me, attempted to strike me in the jaw——

MR. GLAVIN: I object to what the man who did not wear a uniform and who was unknown to him did.

MR. FRAZER: He was with officer's uniform, obviously operating together.

THE COURT: Were you in the car with the other men?

THE WITNESS: One of the evidences that this was a police car was that right back of me, in easy reach of us, was a policeman's billy. That had been left right near the back window. I took the badge from one of the police officers—there were two in uniform. One of them did not wear a badge that had any number on it. I have that number and I can produce it. I did not bring it here because I didn't think I would be questioned on this matter today. And we were driven to the Communipaw Avenue station of the Central Railroad of New Jersey and there I got ready to leave the car and was forcibly kept in the car.

Several times fists were waved in my face because I tried to open the door. And a crowd collected and I shouted to the crowd, telling them what was going on and asking them to be witnesses.

MR. GLAVIN: I object to what he stated to the crowd.

MR. FRAZER: It is all part of the picture.

A. (Continuing.) The crowd grew to about thirty people and a ferry came in and all this time, for about twenty minutes, there were about four of us being held in the car. The four were: myself and Darrell O'Neil, the two girls, Clara Handleman, of Newark, and Beatrice Fox, of Newark. And we were all held until the ferry was about to pull out, at which time we were forced onto the ferry. I refused to go, and with the aid of a uniformed policeman and a man without uniform I was pushed, shoved and shoved onto the ferry. I attempted several times to get off the ferry and the officer in uniform kept me on there and finally the ferry left.

By the way, we were not asked to pay any fare on the ferry.

Q. This was the same evening Norman Thomas was at Jersey City?

A. Yes. I inquired among the workers on the ferry boat as to whether Norman Thomas——

MR. GLAVIN: I object to what he inquired among the workers.

THE COURT: Yes.

Q. And you, I understand, are a resident of Jersey City is that right?

A. I am.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. How long have you been a resident of Jersey City?

A. About four and one-half months.

Q. You were not a resident of Jersey City on November 29th, were you?

A. I was not.

Q. Where were you a resident of then?

A. I was a resident of New York City, I lived at 1325 Union Street.

Q. You are connected with the New Jersey Workers Defense League?

A. Yes.

Q. And do you hold any office in that organization?

A. I am state secretary of the organization.

Q. Is that a branch of the International Defense, or in any way affiliated with it?

A. I know of no organization known as the International Defense. We are affiliated with the Workers Defense League with national offices at 112 19th Street.

Q. International Labor Defense?

A. We have no connection whatever with the International Labor Defense.

Q. And why did you come to Jersey City on November 29th?

A. I came to Jersey City because as a member of the Workers Defense League I felt it was my duty to help obtain the right of workers to distribute leaflets in Jersey City and in any other part of the United States.

Q. How did you find out they were going to distribute leaflets in Jersey City?

A. Another members of the Workers Defense League, Harold Diamond, told me so.

Q. When did he tell you so?

A. Several days before November 29th.

Q. Do you work, other than in your capacity as secretary of the New Jersey Workers Defense League?

A. At the time I was a student at the University of Newark.

Q. The University of Newark?

A. Yes.

Q. Although you lived in New York you were nevertheless secretary of the New Jersey Workers Defense League?

A. I was not secretary of the Workers Defense League at the time.

Q. When did you become secretary of the Workers Defense League?

A. About the middle of December.

Q. Was it because of your activities on November 29th that you were rewarded with that distinction?

MR. FRAZER: I object, not being cross-examination of any kind.

Q. So that you attempted to distribute literature on November 29th?

A. I did.

Q. And you were stopped?

A. I was stopped.

Q. And you came here for that purpose, to distribute literature on that date, is that correct?

A. That is correct.

Q. Did you know that there was an ordinance in effect in Jersey City barring the distribution of leaflets at the time?

A. I knew there was an ordinance but I did not believe it was in effect because the Constitution of the United States clearly declares, in its bill of rights, that there shall be no infringement of the right of free speech or free press.

Q. You took it upon yourself to interpret the United States Constitution in connection with this particular ordinance and you judicially decided that it was unconstitutional, is that right?

MR. FRAZER: I object to the queston.

Q. You came to the conclusion that it was unconstitutional?

A. Yes, also because I had heard in a previous case that had been th. decision.

Q. You do no. remember the case, do you?

A. No, not being an attorney, I didn't take note of the case.

MR. FRAZER: Do you remember the prosecutor in the case?

THE WITNESS: I do not.

Q. What caused you to move to Jersey City? Do you like Jersey City?

MR. FRAZER: I object. He has that personal right.

MR. GLAVIN: I have a right to test his credibility.

THE COURT: I will allow it.

Q. Do you work in Jersey City?

A. A good deal of my time is spent in Jersey City. As state secretary of the Workers Defense League.

Q. Is that your employment?

A. It is not a paying job.

Q. What do you do for a living?

A. At the present time I am unemployed.

Q. So you have plenty of time to go to all these meetings. And who did you say arrested you?

A. I was arrested by Officer No. 82.

Q. No. 82. Can you describe Officer No. 82?

A. Not very well because there were many officers with him. I came in contact and I took down his number, and that is my principal means of identification.

Q. You came in contact with him two or three times, didn't you?

A. That is correct. I think I could describe him roughly, but I would not be as sure of him as I am of the number.

Q. Let's hear how roughly you can describe him.

A. Pardon me?

Q. Let's hear how roughly you can describe him.

A. He was dressed as an officer, dressed in uniform, that is typical of the Jersey City officers. He was approximately five feet ten inches tall and of heavy build. I don't recall any further details. I made no attempt to study his features.

Q. Did he have any physical characteristics that might have impressed themselves upon your memory?

A. None.

Q. Then you came in contact with a sergeant or a lieutenant. Do you know his badge number?

A. The sergeant's number was 16.

Q. Can you describe him?

A. Even less than Officer No. 82, because I met Sergeant No. 16 but once, and as I said, I look at his badge number only.

Q. When you attempted to take notes in the First Criminal Court of Jersey City, you were a prisoner, weren't you?

A. I was.

Q. And you were told not to take notes by someone in authority there?

A. That happened, but Judge Botti granted my right to take notes.

MR. GLAVIN: That is all.

(Witness excused.)

GRACE MILGRAM, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. You were present in Jersey City on November 29th too, weren't you?

A. Yes.

Q. And were you arrested or anything like that?

A. An officer placed me under arrest but then let me go.

Q. And did he exchange you for anyone?

A. A man came up to him in plain clothes and——

MR. GLAVIN: I object to what a man in plain clothes did.

THE COURT: She says that as a fact, not what somebody else said.

A. Yes. He let me go and took my husband.

Q. The officer did?

A. Yes.

Q. In compliance with an order by somebody?

A. Yes.

MR. HAMILL: I object.

MR. GLAVIN: I object.

Q. What did you do the rest of that day?

A. Well, after my husband had been arrested my leaflets were taken away and I saw a few leaflets scattered on the ground. I started to pick them up and another officer came up and took them out of my hand and crumpled them up.

After that I went back to the meeting place, 76 Montgomery Street, and attended a meeting there. When we came downstairs we were blocked by the officers and after waiting about ten minutes people were allowed to file out one by one and placed in cars as the other witnesses have

described. My leaflets were taken away from me as I went through the door. I had some under my coat. The officer asked me if I had any others and I didn't answer him. He didn't search me. Then I went into the courtroom and asked the man in charge on the desk there whether my husband was arrested and he said he was, and I went in and sat at the trial. After the trial was over I went up and try to see my husband and they would not allow me, they said he was down being fingerprinted, and then they said he was in the county jail. When I went over there they would not let me see him and we left money for him and went home.

MR. GLAVIN: I cannot hear that.

THE COURT: Money for bail?

THE WITNESS: No, just for cigarettes.

Q. Did you on any other occasion attempt to distribute pamphlets?

A. Yes, after the Supreme Court decision was announced I went out——

MR. GLAVIN: I object on the ground that this is subsequent to the filing of the bill of complaint in this case and does not come within the four corners of the bill of complaint. There is no allegation which it can support and it has no part in this case.

THE COURT: I will allow it under the amendment.

MR. GLAVIN: I plead surprise and ask your Honor for an adjournment in order that we may be able to meet it.

THE COURT: It is denied. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. I show you a pamphlet or a sheet and ask you whether you have seen that before and if you have ever attempted to distribute those.

A. Yes, I did.

MR. FRAZER: I would like to offer that in evidence.

MR. GLAVIN: If that is one of the leaflets she tried to distribute I have no objection.

(Received and marked Exhibit P-4.)

Q. When was it you were distributing those leaflets?

A. This particular leaflet, on Thursday after the Supreme Court decision.

Q. And what happened in your effort to distribute them?

A. Police Officer No. 1095 came up to me and took them away. I protested that it was my property and he had no right to take them. He said if I wanted them I could go back to the police station and get them. I asked him why he was taking them away and he said it is a violation of the city ordinance. I said, "If I am violating——"

MR. GLAVIN: I object to what she said to the officer.

MR. FRAZER: I think it is part of the picture or part of the res gestae of this case.

THE COURT: Tell us what happened.

THE WITNESS: Well, I asked him to put me under arrest and he refused.

MR. GLAVIN: I object to what she asked him.

THE COURT: He just took the leaflets and you were not arrested?

THE WITNESS: Yes, sir. I tried on several occasions thereafter, I kept going back for more leaflets and they kept taking them away.

THE COURT: Can I see those leaflets?

MR. FRAZER: I will read it if I may.

MR. GLAVIN: I object to its being read into the record. It is a matter of evidence.

MR. FRAZER: It is in evidence.

MR. HAMILL: Another thing, if your Honor please, certain circulars have been offered in evidence as having been distributed or attempted to be distributed. I do not understand that the contents of those go in evidence but they only go in evidence for the purpose of showing that a certain leaflet—and the only purpose of the contents serve are for identification. You don't intend to put in, by means of a circular that they sought to distribute, evidence that you would have to put in by way of witnesses?

MR. FRAZER: No, not at all, but I do intend to put in by way of evidence that the circular itself, as a bit of real evidence, the fact that there is nothing of a nature to foment rebellion or promote disorderly conduct in this circular. I think the circular speaks for itself.

MR. HAMILL: In order that we may understand each other, you do not mean that the mere putting in of this circular proves, or is evidence of the truth or veracity or legality or illegality of what is written in the circular?

MR. FRAZER: No. I could understand that circulars might contain very many false statements.

MR. HAMILL: Precisely. Then I think this is the first time we have agreed during this trial.

MR. FRAZER. It is still real evidence as to the type. Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Did you ever distribute leaflets in Jersey City, Mr. Milgram, without being interfered with?

A. Yes.

Q. When?

A. The day following the day I distributed these leaflets.

Q. Subsequent to the Griffin decision by the Supreme Court?

A. Yes.

Q. And when after the Griffin decision; do you know when the Griffin decision was handed down?

THE COURT: I can give you the date.

THE WITNESS: I think it was March 28th, I am not sure.

THE COURT: March 28th.

Q. Well, when did you attempt to distribute circulars are that?

A. On March 29th and on March 31st. Then on April first I was allowed.

Q. On April first you were allowed to?

A. Yes.

Q. In other words you saw in the newspapers that the United States Supreme Court had decided the Griffin case and the very next day you went over there and attempted to distribute circulars?

A. Yes, sir.

Q. And two days later you attempted to do the same thing?

A. Yes.

Q. And the following day, namely, April first, which was three days after the decision was handed down, you were permitted to distribute leaflets?

A. Yes. However, I was stopped again——

MR. GLAVIN: There is no question pending. I move to strike it out.

Q. By the way, you live also at the Baldwin Avenue address?

A. Yes.

MR. GLAVIN: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. That is, the first of April you were allowed to distribute uninterruptedly?

A. Yes.

Q. Were you ever stopped after that?

A. Yes, on April 30th, at the time of the Thomas meeting.

MR. GLAVIN: I object on the ground——

Q. Will you say what——

MR. GLAVIN: Do you mind if I make my objection?

THE COURT: I will give you the same ruling and give you the same exception.

MR. GLAVIN: Thank you.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. On April 30th at the time of the Thomas meeting, will you say what happened then?

A. Several people went by train, including myself, one of them had a batch of newspapers, I had a bunch of magazines called "War, what for?"

The police officers came up to all of us. We had not begun to distribute any of these, we were just carrying them. The police officers came up and took them away from us, both the newspapers and magazines. There was a bit of a scuffle and some of us refused to give them up, but they tore them away, and we never got them back.

Q. Does that lead you to believe there is any significance about April first?

MR. GLAVIN: I object to what it leads her to believe.

MR. FRAZER: I will withdraw it. Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. So that in addition to going to the so-called meeting at Journal Square on April 30th for the purpose of—I withdraw the question. Nothing further.

MR. FRAZER: That is all.

(Witness excused.)

MR. FRAZER: May I recall Mr. Milgram for just one question?

MORRIS MILGRAM, recalled.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Milgram, did you have occasion to go down to see Captain Quaile of the Jersey City Police?

A. I was forced to see Captain Quaile by a police officer on November 29th. That was when my wife was distributing leaflets and——

Q. Do you mean November 29th?

A. I am sorry, I meant March 29th. It was on March 29th when my wife was distributing leaflets and immediately after the Supreme Court decision, that leaflets were taken from her, and when I protested to the officer No. 1095 who took her leaflets, he had me arrested and took me to Captain Quaile.

MR. GLAVIN: I don't want to interrupt. I just want my same objection to this testimony and an exception.

THE COURT: Certainly.

(Which exception was allowed and sealed accordingly.)

(Seal)

MR. FRAZER: May we assume that this runs to the whole line of examination?

MR. GLAVIN: No, I made no objection to some of it.

A. I was taken to Captain Quaile by officer No. 1095, and officer No. 1095 was rebuked by Captain Quaile and we had a discussion concerning the distribution of leaflets and I asked him whether he intended to continue to seize leaflets from leaflet distributors and what he was going to do about the Supreme Court decision and he told me "We are enforcing the Jersey City ordinance, not the Constitution." And with a warning to me he let me go.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Who said that?

A. Captain Quaile and at the Montgomery Street precinct.

Q. Captain Quaile at the Montgomery Street precinct?

A. Yes.

Q. Is that the precinct that Captain Quaile is captain of?

A. I don't know whether he was loaned to that precinct. All I know is that he was the officer to whom I was handed over.

Q. Do you know Captain Quaile?

A. He introduced himself to me when I asked him what his name was.

Q. What is that?

A. He introduced himself when I asked him what his name was.

Q. I see. That was the day after the—as a matter of fact, this was the day that the Griffin decision appeared in the newspapers, was it?

A. No, that was November 29th, some time after the Griffin decision had appeared.

MR. FRAZER: Do you mean November 29th?

THE WITNESS: I am sorry, March 29th.

Q. Do you know when the Griffin decision appeared? A. I am not certain whether it appeared on March 28th or sooner. I know on March 28th it was in the newspapers.

MR. HAMILL: You did not get an official copy of that decision, did you?

THE WITNESS: Yes, I have seen an official copy——

MR. HAMILL: I am saying that because we tried to and couldn't and I know we were held up for over a week getting it because they were not printed in Washington.

THE COURT: They were printed but they were not sent out.

MR. FRAZER: It was in the *Times*.

THE COURT: Dean Frazer, I think I was a little hard on counsel when I said I would sit until five. I thought we would be crowded for time. So I won't call another witness and I will not have you call one. Mr. Hamill, I found one other decision under that statute we were discussing, the one you gave me in New Jersey, State against Scott, in 90 Atlantic 235. That was a case arising out of a silk strike in Paterson where Scott was convicted in Quarter Sessions of Passaic County and the Supreme Court reversed his conviction, saying that the article that he had written in the newspaper, which was very abusive to the city administration, did not come within the language of the particular Crimes Act.

MR. HAMILL: I think you will find it has no bearing on the other case. You cannot libel an administra-

tion, or you cannot libel a government in the sense that they could sue for libel. You can call a political party or an administration all the black-legs or crooks you want to as long as you do not identify, and you cannot be sued for libel. They so hold—I have forgotten the name of the case—but the Chicago *Tribune* was in it. The Chicago *Tribune* was sued for libel. You cannot libel a government.

THE COURT: There are two other cases, the State against Quinlan and the State against Boyd, also arising out of the silk strike, in 91 Atlantic at page 111, and 586, where the Supreme Court upheld convictions for sabotage under the section following the one we were discussing this morning.

We will adjourn now until ten-thirty tomorrow morning.

(At this point an adjournment was taken to Friday, June 3, 1938, at 10:30 A. M.)

Friday, June 3, 1938.

Case continued.

Appearances as before.

THE COURT: Mr. Hamill, I am going to add to the literature on the subject of this statute. I found one charge to the Grand Jury——

MR. HAMILL: Well, now, may I say this to your Honor——

THE COURT: I am just going to give the reference.

MR. HAMILL: May I say this to your Honor: Why if I may ask, does your Honor read into the record laws and decisions of this jurisdiction when, by force

of the law, the Court takes judicial notice of the existence of these laws and these decisions? I mean is it not unnecessarily adding to the record? I submit that inquiry to your Honor.

You might just as well put the Constitution of the United States in or the laws of the State of New Jersey or anything else. The courts take judicial notice of those things.

THE COURT: Mr. Hamill, you are adding to the record by those remarks more than the reference I was going to give.

MR. HAMILL: I beg pardon?

THE COURT: You are adding to the record more by talking now than I was going to by reading the two pages from the law journal, which would be convenient for me.

MR. HAMILL: Well, I am not going to question the correctness of your Honor's statement, but I did want to express that thought to the Court.

THE COURT: Well, do you mind——

MR. FRAZER: I think your Honor's references are very useful to counsel. We appreciate them.

THE COURT: Do you mind if I read the citations into the record?

MR. HAMILL: Well, of course——

THE COURT: Do you mind?

MR. HAMILL: Of course, when the Dean instructs, there is no appeal from that decision.

THE COURT: I don't think he instructs me. I asked you do you mind if I read into the record? Do you mind if I read these citations into the record?

MR. HAMILL: Your Honor, it is not for me to mind or not to mind. That is my situation.

THE COURT: 21 New Jersey Law Journal at page 140 and 25 New Jersey Law Journal at page——

MR. HAMILL: I didn't get the reference, your Honor.

THE COURT: 21 New Jersey Law Journal.

MR. HAMILL: 21 New Jersey Law Journal.

THE COURT: At page 140.

MR. HAMILL: Page 140.

THE COURT: 25 New Jersey Law Journal at page 321. All right.

MR. FRAZER: Your Honor will remember that I agreed to supply Mr. Hamill with certain information as to the names or the numbers of officers who were testified to by Mr. Nydes yesterday.

MR. HAMILL: You gave me what?

MR. FRAZER: Mr. Nydes did not have his memorandum of the officers' numbers and it was agreed that I was to supply those numbers, and I am now doing so for the purpose of the record. The officers have badge numbers 134 and 564, and the car——

MR. HAMILL: Now, I didn't get those; not so fast, if you please. Badge numbers——

MR. FRAZER: 134 and 564, and the registration number of the car in which they drove was MG-543. Then in connection with the testimony of Mr. Silverstein the names of the managers of the halls he mentioned are as follows: White Eagle Hall, Mrs. L. Gorzynski; Columbia Hall, Jack Flieger; the Polish Hall, we were unable to find anyone who answered to the title of manager. I cannot supply that name.

MR. HAMILL: So that as the statement stands—maybe I have spoken too quickly—have you any name——

MR. FRAZER: For the Polish Hall I have not. It is some kind of a committee that operates there.

THE COURT: Doesn't the witness remember——

MR. FRAZER: He does not remember the name, sir, of the person with whom he spoke and he thought he could find out, but the hall apparently is operated by a committee and there is no one who assumes the responsibility of being manager, so-called.

Now, I would like to ask Mr. Hamill whether he has had an opportunity to examine these plants in Jersey City, which I gave him yesterday, and whether he is willing to stipulate that any of them is engaged in interstate commerce within the meaning of the Wagner Act.

MR. HAMILL: I will not be able in any case to stipulate that they come within the meaning of the Wagner Act, but I will know by noontime, I will be able by noontime to give you an answer, as to what number of them and all of them, if they are, located in Jersey City.

You will, of course, understand that when we left here and got back, all public business was closed, and I could not turn it over to anybody to investigate and give me the information. But I expect to have word for you by the noon recess.

MR. FRAZER: I think that it will not be difficult for us to prove that they are located in Jersey City. I understand that you are unwilling to stipulate that they are engaged in interstate commerce, whether they be so engaged or not?

MR. HAMILL: I have no means of knowing. That is my trouble. I have no means of knowing.

THE COURT: Well, you will have to call the manager from each plant.

MR. FRAZER: Yes, that is all right.

MR. HAMILL: What I mean is, I certainly do not know and cannot be expected to know whether a particular business is in interstate commerce. I am willing to turn it over to someone who might know, but I could not turn it over before this morning.

MR. FRAZER: You are quite certain you don't know whether the Colgate Palmolive Peet Company sells soap outside of New Jersey or not?

MR. HAMILL: Well, I know the way you know. I believe they sell soap to every country in the world. But now whether you or I could testify to that is another thing. You ask as if my opinion is evidential.

MR. FRAZER: All right. I just wanted to know whether you would be willing.

MR. HAMILL: I know that the Public Service is located in New Jersey, the Public Service Corporation. Now whether it is under the Wagner Act or not I don't know. I know certain other corporations—they are matters of common knowledge. The Court would almost take judicial notice of the fact, but that is far different from asking an attorney, does he admit they come under a certain law. I don't know.

MR. FRAZER: Now I, in pursuance of the understanding between the Court and counsel in regard to certain of the officials of Jersey City, have already spoken to Mr. Hamill before, but for the sake of the record I wish to state that I have requested him to have Director Casey of Jersey City in attendance on the Court today at twelve o'clock. I understand from Mr. Hamill that he has already made such arrangements.

MR. HAMILL: Suppose you state it to the Court.

MR. HERSHENSTEIN: Your Honor, we have made these arrangements to have Commissioner Casey here in the Court room.

MR. HAMILL: You want none of the others subpœnaed witnesses today except Commissioner Casey?

MR. FRAZER: That is all.

MR. HAMILL: All right.

MR. FRAZER: Mrs. McKee, will you take the stand, please.

FRANCES McKEE, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

THE CLERK: Where do you reside?

THE WITNESS: The Hotel Brevoort, New York City.

Q. Mrs. McKee, are you associated with the Civil Liberties Union?

A. Yes, I am executive secretary of the New Jersey Civil Liberties Union.

Q. And in that capacity did you have occasion to seek to obtain halls for meetings of the Union?

A. I attempted to obtain a banquet hall for a dinner and small conference rooms.

Q. And will you state where you made those efforts in Jersey City?

A. In Jersey City I made an effort at the Fairmount Hotel and at the Plaza Hotel for the dinner and for conference rooms at the Y. M. C. A. and Y. W. C. A.

MR. HAMILL: At the Fairmount Hotel, at what other places?

THE WITNESS: The Plaza Hotel

MR. HAMILL: What other?

THE WITNESS: For conference rooms at the Y. M. C. A. and Y. W. C. A.

MR. HAMILL: At the Y. M. C. A. and at the Y. W. C. A.

Q. Were you able to obtain the halls?

A. No, I wasn't.

Q. And with special reference to the Fairmount Hotel——

THE COURT: Fairmont, is that it?

Q. Fairmount, I think, is it not?

A. Yes, m-o-u-n-t.

Q. Will you state what occurred there?

MR. HAMILL: Now, is that the hotel at Boulevard and Fairmount Avenue?

THE WITNESS: Yes, it is, it is the Fairmount Hotel.

A. On April 13th I went there and inquired whom I should see about making arrangements to rent the hotel to hold the Civil Liberties dinner there and I was taken around to the manager's office. I told him the New Jersey Civil Liberties Union——

MR. HAMILL: No, not what you told him. I object under your Honor's ruling.

THE COURT: Mr. Hamill, it is not what he told her. She is only saying that she gave the man the name of the organization.

MR. HAMILL: Of course, my objection is these declarations are self-serving.

THE COURT: That can hardly be very self-serving. I will allow it.

MR. HAMILL: I want to enter an objection and have a ruling.

THE COURT: I have ruled against you. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Will you proceed, Mrs. McKee.

A. I asked him if we could use the Fairmount Hotel for that purpose during the last week in April or the first week in May.

THE COURT: What is his name, please?

THE WITNESS: His name is William K. Moser.

THE COURT: We had his name before.

MR. HAMILL: I ask your Honor to instruct the witness that she must not tell what Mr. Moser said to her. The only thing——

THE COURT: Mr. Moser is going to be a witness in this Court, he can speak for himself.

MR. HAMILL: Then that testimony is competent testimony, but what he said from the lips of another witness, it is my contention is not.

Q. Now, did Mr. Moser at that time give you a card——

MR. HAMILL: Now, may I say, your Honor please——

A. After he said we could hold the dinner there he did give me a card.

MR. HAMILL: She can say what Mr. Moser did. This is important testimony. Ordinarily I don't mind a leading question, it saves time; it is sometimes very necessary, but in a situation of this kind we ought to adhere strictly to the legal rules.

Q. He did give you a card?

A. Yes, he did.

Q. And I show you a card and ask you whether that is the card which he gave you.

A. Yes, it is.

MR. FRAZER: I would like to offer the card.

MR. HAMILL: Oh, no. That is nothing more than— instead of testifying to what Mr. Moser said to her, that is the same as saying "Mr. Moser handed me that statement."

THE COURT: May I see the card?

MR. HAMILL: And Mr.—well, now, to whom will I give it?

MR. FRAZER: I will hand it to his Honor.

MR. HAMILL: And Mr. Frazer saying, "I hand the statement in evidence."

Now, what is the difference whether Mr. Moser said these things which would be evidence or Mr. Moser put them on a card and then they are read in evidence?

THE COURT: Marke it for identification, and then when Mr. Moser is here we will ask him about it.

(Marked Exhibit P-5 for identification.)

Q. How large an assembly hall did you request accommodation for?

A. I requested accommodation for three or four hundred, and on learning that I couldn't obtain such a large place there, asked how many we could have, because we would specially like to hold it at that hotel.

MR. HAMILL: Oh, I object to this, telling the reason why she wanted to hold the meeting.

THE COURT: She is advertising Jersey City.

MR. HAMILL: Well, even so, she didn't come over to advertise Jersey City. I think the court will take judicial notice of that; not in any complimentary fashion

THE WITNESS: May I continue?

Q. What date did you arrange——

MR. HAMILL: The court will take judicial notice that her visit was not out of motives of graciousness.

Q. What date did you ask for?

A. Well, I asked for any date, during the last week in April or the first week in May and, as I recall it, he said we might have Thursday, May 5, as well as a number of other dates, and I selected May 5.

Q. Did you have the dinner at that hall?

A. No, we didn't. After these arrangements were made, Mr. Moser changed his mind.

MR. HAMILL: No, I object to that.

THE COURT: She is not saying what he said.

MR. HAMILL: Oh, she is saying he changed his mind. She could only know that by reason of some one telling her.

A. Continuing.) Well, he did tell me.

THE COURT: As I understand it, he refused to allow——

MR. HAMILL: I object to that.

THE COURT: Did he refuse?

MR. HAMILL: Well, now, your Honor——

THE COURT: Did he refuse?

THE WITNESS: Yes. He asked me——

THE COURT: No, not what he said; just the fact.

THE WITNESS: Yes, he refused.

Q. And before he refused, will you state specifically——

MR. HAMILL: Now, just ask her what she said.

Q. Or what did you state between the time that he gav you the hall for May 5th and the time that he refused, wha did you say to him?

A. In answer to a question——

MR. HAMILL: I object to what she said to him. Thi is putting in her declaration as evidence It is evidentl a self-serving declaration. It is a declaration in favo of interest.

THE COURT: I am not going to allow the conversa tion. Mr. Moser will be here, I understand.

MR. FRAZER: Well, sir, if I can't prove the conver sation by Mrs. McKee, her half of it, and I can't prov by her Mr. Moser's half of it, when I call Mr. Moser can't prove Mrs. McKee's half by him or his half. mean how do I do it? Put them on as Siamese twins

THE COURT: Well, she has testified that she aske for this hall, this dining room, and he said at first h would give it to her and afterwards refused it; is tha right?

THE WITNESS: Yes, on certain grounds.

THE COURT: Well, those grounds we will learn fro Mr. Moser.

MR. FRAZER: Well, may I have her state what sh said to Mr. Moser and then prove by Mr. Moser wha he said in reply? I mean there must be some way I ca prove this. If I can't prove it either by Mrs. McKe or Mr. Moser, it seems that I can't put the testimony in

THE COURT: Well, call Mr. Moser and you can prov it by him.

MR. FRAZER: Can I prove the whole conversatio by Mr. Moser?

THE COURT: Yes.

MR. FRAZER: Why can I not prove the whole co versation by Mrs. McKee then? She is equally——

THE COURT: Because that is hearsay, Dean Frazer.

MR. FRAZER: Well, why isn't Mr. Moser's testimony as to what Mrs. McKee said hearsay then?

MR. HAMILL: Well, we are going to deal with that, or rather we, so far as we are permitted by our position, will deal with that when it comes up on the stand. It may be we will object to his testifying.

THE WITNESS: May I——

MR. HAMILL: You seem to take it for granted that you have a perfect right to put those statements in evidence. Now it is quite probable that you haven't any right to put them in evi[illegible]ce at all.

Q. Were you in the co[illegible]y of anyone when you called upon Mr. Moser on this occasion?

A. Yes, I was accompanied by Mrs. Mildred Cox.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Mrs. McKee, you live at the Hotel Brevoort in New York City?

A. Yes, I do.

Q. And how long, please, have you lived there?

A. I have lived there since November.

Q. 1938?

MR. FRAZER: No, '37.

A. '37.

Q. 1937?

A. Yes.

Q. And what date in November, 1937?

A. I don't remember the exact date. It was some time along the middle of November.

Q. Well, it was some time along in the month of November?

A. Yes.

Q. Did you tell us when you called on Mr. Moser, the dates?

A. I told you that I called on him April 13th.

Q. April 13, 1938?

A. That is right.

Q. And where had you lived before you came to the Hotel Brevoort?

A. I lived on West 11th Street where I had an apartment.

Q. And how long did you live there?

A. A year, I think.

Q. And where did you live before that?

A. Well, before that I had an apartment at 30 Grove Street, in New York.

Q. And how long have you been executive secretary of New Jersey for the Civil Liberties Union?

A. Since March 14th.

Q. What year?

A. This year.

Q. Since March 14, 1938?

A. Yes.

Q. Now is that the American Civil Liberties Union?

A. That is the New Jersey Civil Liberties Union.

Q. And they are affiliated with the American Civil Liberties Union?

A. Yes.

Q. You have been executive secretary since March, 1938, some date in March?

A. That's right.

Q. And what was your official position before that?

A. I hadn't worked for ten or twelve years before that; I had been simply a housewife and taking care of my child.

Q. Well, now, in what capacity did you visit Mr. Moser?

A. As executive secretary of the New Jersey Civil Liberties Union and as a member of the Dinner Committee of the New Jersey Civil Liberties Union.

Q. You never lived in New Jersey, did you, Mrs. McKee?

A. Yes, I brought up in New Jersey.

Q. And when did you first leave New Jersey to take up your residence in New York?

MR. FRAZER: I object to this as being wholly immaterial, sir.

MR. HAMILL: A matter of testing credibility, the Court allows wide latitude in that.

THE COURT: I don't allow much latitude——

MR. HAMILL: We are bound by her answer.

THE COURT: I don't allow much latitude in inquiring into the personal affairs of witnesses unless they have a bearing on the case.

MR. HAMILL: To test credibility.

THE COURT: Not into their personal affairs.

Q. When did you first become interested in civil liberties in New Jersey?

A. I have always been interested in civil liberties everywhere.

Q. No, when did you first become interested in civil liberties in New Jersey?

MR. FRAZER: "Everywhere" would seem to include New Jersey, sir.

A. Well, as a small child at my father's table; I cannot answer much more specifically than that.

Q. Was the Civil Liberties Union——

A. Oh, do you mean the New Jersey Civil Liberties Union or civil liberties in New Jersey?

Q. The Civil Liberties Union.

A. Oh, pardon me, I misunderstood you. I became interested in it about a week before I came out to work for them.

Q. That is before March, 1938?

A. Yes.

Q. How long before that?

A. Well, I don't recall the exact date but they notifie me of my appointment on the 11th of March and it was tw or three days before that, I think, I had come out to b interviewed for the position.

Q. Did you ever participate in their activities?

A. No, I never have.

Q. How did they come to engage your services?

MR. FRAZER: I object. How can she testify to th state of mind of the Civil Liberties Union?

THE COURT: I don't think it is proper but the an swer may be interesting; go ahead.

A. I asked them to hire me.

Q. Well, that answers very candidly. I think that's all

MR. FRAZER: Thank you, Mrs. McKee.

Mrs. Cox.

Oh, might I ask Mrs. McKee one question?

By MR. FRAZER:

Q. Are these figures here in your handwriting?

A. Yes, I wrote them down at Mr. Moser's direction.

MR. FRAZER: Referring to P-5 for identification.

MR. HAMILL: I ask that that part which says " wrote them at Mr. Moser's request" be stricken ou that any request by Mr. Moser be stricken out. I a quite willing that that part which says, "Yes, that i my handwriting," that that stay in.

THE COURT: All right.

MILDRED COX, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: Address?

THE WITNESS: 385 Belmont Avenue, Newark.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mrs. Cox, were you with Mrs. McKee on April 13th, was it, 1938, when she went to Jersey City looking for halls for the Civil Liberties Union?

A. I was.

Q. And did you go to any other place other than the Fairmount Hotel with her?

A. Yes, we went to the Plaza Hotel.

MR. HAMILL: I cannot hear her, your Honor.

A. The Plaza Hotel.

MR. HAMILL: If you don't mind I will stand up.

Q. The Plaza Hotel. Any other place?

A. No, that is all.

Q. Just those two hotels?

A. Yes.

Q. And did you succeed in obtaining a hall at either of those places?

A. No, we did not.

Q. Did you meet Mr. Moser that day?

A. Yes, I did.

Q. Were you present when Mr. Moser gave the card, Exhibit P-5 for identification, to Mrs. McKee?

A. Yes, I was.

Q. And did you observe under what circumstances Mrs. McKee made certain annotations upon that card?

A. Yes.

Q. And what were the circumstances under which she made those annotations?

A. Mr. Moser agreed to give her the hall for the dinner——

MR. HAMILL: I object, that is an attempt by simply varying the question without changing the purpose.

THE COURT: It is already in evidence.

MR. HAMILL: The card is not in evidence; the card is merely marked for identification.

MR. FRAZER: But he gave her the hall.

THE COURT: The other witness said that he first agreed to give the hall; that is already in evidence.

Q. And having agreed to give the hall were any terms arranged for that hall?

A. Yes, he took us through the hotel to choose a room that we might desire.

MR. HAMILL: I cannot hear a word.

THE COURT: A little louder.

A. Mr. Moser took us through the hotel to choose a room that we might desire for the dinner.

Q. And was a room selected?

A. I believe so.

Q. And subsequent to that was there any change made in the arrangements about the hall?

MR. HAMILL: Now, Mr. Frazer, are you testifying or is the witness testifying?

MR. FRAZER: I am asking the witness.

MR. HAMILL: Oh, yes, but the witness has only to nod her head and your question is on the record. Now, this isn't the first time Mr. Frazer has put over evidence in the form of a question and that ought to stop.

Q. What happened after you went to examine the various halls?

A. We went back to Mr. Moser's office and when Mrs. McKee told him what she wanted the hall for he refused to give it to us.

Q. And what was it she wanted it for?

A. For a dinner for the Civil Liberties Union.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Mrs. Cox, you live at 385 Belmont Avenue, Newark?

A. Yes.

Q. And how long, please, have you lived there?

A. About a year and a half.

Q. And where did you live before that?

A. In 44 Hughes Street, Maplewood.

Q. And have you lived in New Jersey all your life?

A. Yes, I have.

Q. You are a member of the American Civil Liberties Union?

A. Yes.

Q. Of the New Jersey branch?

A. Yes, I am.

Q. Since how long, for how long?

A. Since last April.

Q. Since last April. Who asked you to join it?

A. Well, I don't remember anyone asked me to join it.

Q. And is this the first activity of the Civil Liberties Union, this hiring of the hall, that you took part in?

A. Yes, it is.

Q. I think that is all.

MR. FRAZER: Thank you, Mrs. Cox.

MR. HAMILL: Oh, may I ask Mrs. Cox a question, recall her to the stand, please?

THE COURT: Certainly.

By MR. HAMILL:

Q. Mrs. Cox, who is the head of the New Jersey branch of the Civil Liberties Union?

MR. FRAZER: I object as not cross-examination.

MR. HAMILL: If she knows.

THE COURT: You mean what individual?

MR. HAMILL: Yes.

THE COURT: I don't think it is cross-examination but I suppose it is relevant. Do you know?

THE WITNESS: I cannot think of the name at the moment.

THE COURT: Isn't it a matter of record somewhere?

(The witness retired.)

MR. FRAZER: I am perfectly willing to stipulate who it is.

THE COURT: It can't be a mystery.

MR. FRAZER: The Reverend Dr. Ball. I will stipulate—I think that's right——

THE COURT: What is his first name?

A VOICE IN THE COURTROOM: Archey D.

THE COURT: And what church does he have, if any?

THE VOICE: The Methodist Episcopal in Hackensack.

THE REPORTER: Was that Mrs. Cox's reply?

MR. HAMILL: It is a statement by Mr. Frazer.

MR. FRAZER: Mrs. Cox said she didn't remember his name and I was trying to help counsel by stipulating. If he doesn't want a stipulation it will be withdrawn.

MR. HAMILL: If you are helping counsel, I merely want to remark I fear the Greeks bearing gifts.

ASHLEY CARRICK, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Carrick, you are a member——

MR. HAMILL: Now, Mr. Carrick lives on Gifford Avenue, but I don't know the number. Is that right?

THE WITNESS: Yes; 103 Gifford Avenue.

MR. HAMILL: 103 Gifford Avenue.

Q. Mr. Carrick, you are a member of the bar of New Jersey, are you not?

A. That is right.

Q. And as we have just learned, live in Jersey City?

A. That is right.

Q. Now, on the night of April 30th, I believe it was, Mr. Norman Thomas came to Jersey City?

A. That is true.

Q. And attempted to speak in Journal Square?

A. That is right.

MR. HAMILL: Now, of course—Mr. Frazer, excuse me a moment, please—of course it is understood that we still renew our objection to the fact that this is something which happened after the bill of complaint, and object to the fact that your Honor permitted an amendment without giving us the right to have time to prepare for it when we asked for the adjournment.

THE COURT: Yes.

MR. HAMILL: All right.

Q. Mr. Carrick, you were in Journal Square that evening?

A. Yes, sir, I was.

Q. And will you state to the Court what you observed and what happened to you on that occasion?

A. I arrived at Journal Square after Mr. Norman Thomas had been sent to New York for the first time. There was quite a crowd milling about——.

THE COURT: Don't say anything you didn't see, Mr. Carrick. If you don't know whether he was sent to New York or not, don't tell us anything you didn't see.

THE WITNESS: I did see the crowd, however, hanging around the Square. So we made inquiries to know what was going on, and I was told by a policeman that Norman Thomas was in the Jersey Observer Building. So I went as near as I could to the entrance of the Observer Building. However, there were policemen making us move back and forth and preventing a crowd from collecting at the Observer Building. But I did see an unusual excitement at the building, and I concluded that Norman Thomas was coming out, and I moved up and I saw that he was coming out; and at that time I started to applaud and the crowd in general followed me and applauded, and even some people cheered. The moment the applauding started, the police began to disperse the crowd by running at them, pushing them and driving them away. I didn't like to turn and run, so I held my ground and I was evidently angry, and they saw that I was not going to run, so two, at least two policemen converged at me at the same time and approached me so closely on either shoulder that I could not raise my fists. At about this time, while I was struggling to free myself, a man who wore an overcoat but not a uniform approached and hit me in the eye, and another policeman struck me on the knee with a night stick. I was then not exactly beaten, but I was pushed around until I realized that there was no use trying to resist. I was then placed in a car with one policeman driving and one policeman sitting beside me and a detective sitting in the car. We then went down to

the New Jersey ferries. During the course of that ride I was not beaten up in any way. However, the officer who sat next to me and the detective used very obscene language.

Q. What did they say?

A. I can't repeat it, sir. I was held in the car at the Central Railroad of New Jersey ferry slip until a ferry was about ready to leave. While I was waiting for the ferry two other cars came down, bearing other people who the police had evidently picked up at the same time.

Mr. Hamill: Did you know those other people, Mr. Carrick?

The Witness: I have their names.

Mr. Hamill: I mean did you know them at that time?

The Witness: I didn't know them then.

A. (Continuing.) Two boys were forced into the car in which I was being held, and they sat on each other's laps because there wasn't room for them. When the ferry was ready to go we were put upon the ferry and there was absolutely no way that we could avoid going on the ferry and remaining there until the boat started except by another physical encounter. I stated to the policeman in the car that I was a Jersey resident and could prove it. Immediately upon arriving in New York I came back to the Jersey Observer Building and gave my statement to the reporters. And I believe that is all that I can testify to.

Mr. Frazer: Cross-examine.

Cross-Examination.

By Mr. Hamill:

Q. Did you say, Mr. Carrick, that two policemen struck you at Journal Square, or that someone that you didn't know and a policeman?

A. I didn't say that two policemen struck me.

Q. Well, I didn't get that. That is why I am asking you this question.

A. I said that a man wearing plain clothes stepped up to me and struck me in the eye while I was being held by two policemen.

Q. You don't know whether he belonged or was a member of the force or not? You had no means of knowing?

A. I don't know the man, no.

Q. And the policeman wore a uniform, the man who struck you did not?

A. Yes, the policemen wore uniforms.

MR. HAMILL: I think that is all, Mr. Carrick.

MR. FRAZER: Thank you, Mr. Carrick.

(Witness excused.)

MR. HAMILL: If your Honor please, we want to put on record at this time the fact that yesterday Mr. Arthur Vanderbilt, representing Mr. Norman Thomas, made application to the Supreme Court in the person of the Chief Justice thereof, for a mandamus to test the validity of the ordinance of Jersey City, the circular ordinance, rather the ordinance regarding public meetings without a permit, and that he was allowed an alternative writ of mandamus by the Chief Justice with a rule to take testimony.

MR. FRAZER: I move that the remarks be stricken from the record as being immaterial to this issue and as not being evidential, a mere statement of counsel.

THE COURT: Supposing you file, Mr. Hamill, if you want it in evidence, a copy of the allowance of the writ.

MR. HAMILL: If the Court wants it—I mean if there is any doubt about that, if the Court or counsel wants it——

THE COURT: I don't mean a certified copy; just a copy of it.

MR. HAMILL: We shall produce it.

THE COURT: Because I think it would be relevant on any opinion or any decision that I rendered.

MR. HAMILL: Then we shall produce that, your Honor.

WILLIAM C. KERNAN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. You are a priest of what church?

A. Of the Episcopal Church.

Q. And you have a charge where, Father?

A. At Trinity Church in Bayonne.

Q. On the evening of April 30, 1938, were you at Journal Square, Jersey City?

A. I was.

Q. Will you state what happened there as you observed it?

A. Yes, sir. I arrived at Journal Square at about seven-thirty on that evening. I was waiting for the announced appearance of Mr. Norman Thomas to speak.

MR. HAMILL: Just excuse me, Father, for one minute.

It is understood that all of this testimony, so that I will not be interrupting anyone again, in order that we may understand, that all of this testimony as to what took place after the filing of the bill is subject to the objections I made, with the exceptions allowed?

MR. FRAZER: I offered counsel yesterday that his objection might go to this whole line of testimony without being renewed.

MR. HAMILL: Well, all right. Then that evidently settles the matter. It is.

Q. Will you proceed, Father Kernan?

A. Yes, sir. And while I was waiting for the a nounced appearance of Mr. Thomas, I walked around t Square, particularly around that part of it which lies b tween Hudson Boulevard and Sip Avenue. I observed pa ticularly that there were two people, one a young m and one a young woman, who were attempting to distribu some leaflets that concerned war.

I saw both of those people attacked by men in pla clothes, the leaflets taken from them, and in both instanc policemen in uniform standing there and doing nothing protect these people; the most that they did was to s "Break it up," "Break it up and move on." One of t people concerned in this, I believe, was a detective cause——

MR. HAMILL: Oh, I object, Father, not what y believe, what you know.

A. What I saw.

Q. What you saw.

A. One of these men was a detective because he w shoving Mrs. Morris Milgram along and she asked h who he was; he said he was a detective. She said, "Let see your badge," and he drew out something that he h in his hand—now, it might have been his watch, but I t it that it was his badge.

MR. HAMILL: Now, may I say this, your Hon please, I will have to object because if Father Kern cannot tell that it was his badge, that is the thing—

THE WITNESS: No, I didn't see it.

MR. HAMILL: —by which we identify him, and shall have to object to the testimony.

A. I didn't see what he held in his hand.

Q. Will you proceed, Father.

A. After that at about eight o'clock an automob drew up. The crowd rushed forward, began to cheer a

to applaud and to cry "There he is." There was no opportunity from where I stood, which was about thirty feet from where the car drew up to the curb, to see anybody even stand up in the automobile because the police were on it in a moment.

MR. HAMILL: Well—all right—it isn't evidential but since it helps me why should I object? Did you say the police were honest in their motives?

THE WITNESS: No, were on it——

MR. FRAZER: Were on it.

MR. HAMILL: Were on it in a moment. Oh, I do object to that.

A. The police converged on it in a moment quickly.

Q. In the twinkling of an eye?

A. In the twinkling of an eye, as quick as a flash. And then at once the police moved through the crowd from that point, which was at some place between Hudson Boulevard and Sip Avenue, to a waiting automobile at the corner of Hudson Boulevard and the Square. I followed the crowd to that point and saw the car drive off with the siren screaming.

Q. Were you able to see Mr. Thomas?

A. No, sir, you couldn't see him, the thing happened too fast.

Q. What happened after that, Father Kernan, as far as you were concerned?

A. Well, after that I stayed in the Square for about an hour more and I saw the general way in which the crowd was being handled, people weren't allowed to stand still. I saw Mr. Morris Milgram appear, he had a red scar on the left side of his face. I went down to police headquarters, asked the Chief of Police where Mr. Thomas was taken and he said he didn't know. Then I continued around the Square. I saw two young men arrested and shoved into a police car by the police officers.

Q. What had they been doing?

A. I don't know what they had been doing, sir.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Father, may I ask why you were there that night?

A. Yes, sir, I was there because I understood that Mr. Thomas was going to make a speech in Journal Square. I also understood that he was going to be stopped. So I wanted to see if a thing like that were possible in the United States and I went down.

Q. Now, you didn't see Mr. Thomas though, did you?

A. No, sir, I didn't see him.

Q. You are not a member of the Civil Liberties Union?

A. No, sir.

Q. Then I don't understand you to say, Father, in any part of your testimony that at any time that evening you saw Mr. Thomas, is that correct?

A. That is absolutely correct.

MR. HAMILL: I think that's all, Father.

MR. FRAZER: Thank you very much, Father Kernan Is Mr. Timothy O'Brien here?

MR. HAMILL: May I recall Mr. Carrick for a question?

THE COURT: Certainly.

ASHLEY CARRICK, recalled.

CROSS-EXAMINATION (Continued).

By MR. HAMILL:

Q. Oh, Mr. Carrick, you are a member of the New Jersey bar, of course, and you have lived in Jersey City all your life?

A. Yes, sir.

Q. Now, you were aware of the existence of the ordinance forbidding the holding of public meetings on the streets or public places without the issue of a permit by the Director of Public Safety?

A. I am well aware of that ordinance.

Q. And you knew it at that time, of course?

A. Certainly.

Q. And you knew that it was denied to Mr. Thomas—I don't mean the date—you knew that it was denied?

A. I don't recall whether I knew it at that time or not; I did know that Norman Thomas was coming to speak and I wanted to see how he was going to be treated.

Q. Well, now, Mr. Carrick, didn't you know that at that time Mr. Thomas was coming to speak, permit or no permit?

A. I cannot recall whether I knew it at that time.

Q. Well, now, you had been reading the papers, and don't you know that he said at a meeting in New York that he would come to speak permit or no permit?

A. If that is the fact and the papers so record it I probably knew it, but I don't recall now what my state of mind was then.

Q. If you had known he had been denied a permit would it have changed your determination?

A. It certainly would not have.

Q. You mean you would have gone there anyhow?

A. I went there as an observer to see how Norman Thomas was going to be treated. It doesn't matter to me whether or not he had a permit.

Q. And you would have gone whether he had a permit or not?

A. Certainly, I would have gone if he was a gunman.

Q. That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. Just a minute. Have you ever seen any other meetings in Journal Square?

A. Yes, sir, I have; I attended the Hague Rally at which O'Connell and Bernard failed to appear; at that time I saw the police unable to maintain order, I saw them run out a young man because they couldn't save him from the mob any other way.

MR. HAMILL: When you say——

MR. FRAZER: Wait a minute.

MR. HAMILL: Oh, I thought you had finished; there had been such a pronounced pause.

MR. FRAZER: I was just trying to assimilate what he had said.

Q. Did you see any other meetings besides that particular Hague meeting that you speak of?

A. Yes, sir, I went to the rally at Pershing Field. I saw a man carried out unconscious.

Q. When was that?

A. I believe it was about a week ago Saturday night.

Q. The so-called O'Connell meeting?

A. Yes, sir, the meeting at which O'Connell tried to speak.

Q. Did you know the man who was carried out?

A. No, I didn't know him; I have since learned from the papers who he was.

Q. Did you see when he was laid out?

A. No, sir.

Q. You didn't observe that?

A. No, sir.

Q. You merely saw him being carried out. Do they ever have any meetings in Journal Square during the political campaigns?

A. Yes, sir.

MR. HAMILL: I spoke at one, a big one. There isn't any doubt about that.

MR. FRAZER: What is the date, will you tell me?

MR. HAMILL: Oh, I don't know, maybe four years ago, maybe more. The campaign of 1929.

THE COURT: Have you got a copy of your speech?

MR. HAMILL: I made a good speech, you should have been there; you missed something.

THE COURT: Mr. Hamill, have you got a copy of it?

MR. HAMILL: No, it is one of those productions of wisdom that are lost to the world.

MR. FRAZER: All right, cross-examine if you want.

MR. HAMILL: That's all, Mr. Carrick.

MR. FRAZER: Now, Mr. O'Brien.

By MR. HAMILL:

Q. That is, Mr. Carrick, you have seen Republican and Democratic meetings and other meetings in that Square, haven't you?

A. I have seen meetings there until the night Burkitt was arrested.

Q. I mean you have seen them and regardless of political parties, is that correct?

A. I think Mr. Burkitt's speech was a political speech.

Q. Yes, and you have seen other speeches—I mean you have seen Democratic meetings there and you have seen Republican meetings there—I mean before a year ago, say?

A. That's right, to my knowledge none of them had a permit.

Q. Well, now; to your knowledge none of them had a permit, but you weren't particularly interested at that time whether they had a permit or not; the question wasn't a live question, was it?

A. No.

MR. HAMILL: I don't know whether I had a permit or not.

MR. FRAZER: No, you didn't, you know you didn't.

MR. HAMILL: You know me too well. That's all.

TIMOTHY O'BRIEN, called and sworn on behalf of the plaintiffs, testied as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. I think the date is May 7, 1938.

MR. HAMILL: Now may I get Mr. O'Brien's name and address?

THE CLERK: Timothy O'Brien.

MR. HAMILL: Mr. Timothy O'Brien; and what address?

THE WITNESS: 115 Mott Street, New York City.

MR. HAMILL: Mott Street.

THE WITNESS: Mott.

MR. HAMILL: Jersey City?

THE WITNESS; New York City.

MR. HAMILL: 115 Mott Street, New York City. All right, Mr. O'Brien.

Q. Mr. O'Brien, what is your business?

A. I am affiliated with the Catholic Worker and secretary of the Catholic Union of the Unemployed.

MR. HAMILL: I wish you would talk a little louder, Mr. O'Brien, please.

THE WITNESS: I am affiliated with the Catholic Worker and I am secretary of the Catholic Union of Unemployed, which is an affiliate of the Catholic Workers Union.

THE COURT: What is the Catholic Worker? A newspaper?

THE WITNESS: A newspaper and a movement.

Q. How frequent publication of the paper?

A. Monthly.

Q. Now the date I think is May 7, 1938. Were you in Journal Square that night?

A. I arrived in Journal Square about 7:30 on the evening of May 7th.

Q. Now from the time that you arrived will you state what happened to you and what you observed in Journal Square and what the occasion of your being there was?

A. I arrived at 7:30 in the company of William Callahan, managing editor of our paper, and Joe Zarella, also of the Catholic Worker establishment.

MR. HAMILL: I wish you would spell Zarella.

THE CLERK: Z-a-r-e-l-l-a.

MR. HAMILL: Zarella.

A. (Continuing.) We arrived in the Square at 7:30. We came for the intent and purpose of distributing literature, in respect to the fact that we wanted to restore civil rights in Jersey City——

MR. HAMILL: Now, no. I object to that. Never mind——

Q. Have you the literature here?

MR. HAMILL: Never mind telling us why. He came to distribute the literature.

Q. Have you a copy of the literature?

A. One of my colleagues has, I think.

THE COURT: What was the date of this?

THE WITNESS: May 7th, your Honor.

MR. HAMILL: Now——

MR. FRAZER: This is my witness, you know.

MR. HAMILL: Yes, I know. That is why I am watching you.

Q. I show what appears to be a mimeographic sheet; is that the literature which you were distributing?

A. Yes, sir.

MR. FRAZER: I would like to offer this in evidence.

MR. HAMILL: What purpose will this serve in evidence? The only thing that should go in is the fact that he distributed a pamphlet. The contents of the pamphlet, or, shall I call it circular, or leaflet, are not evidential, and the evident purpose of this is to get the contents in. Now the only thing judicially that the court can take cognizance of is that he attempted to distribute a circular, which did not contain any unlawful matter. The actual contents are not evidential in this case. Otherwise he could say, "I came to distribute the dictionary," or "I came to distribute the history of the world."

MR. FRAZER: That wouldn't be true.

MR. HAMILL: "In fifteen volumes" and then Mr. Frazer would say, "I put the fifteen volumes in evidence."

THE COURT: Mr. Hamill, you admitted the other circular without objection.

MR. HAMILL: Sir?

THE COURT: You admitted the other circular without objection.

MR. HAMILL: No, I distinctly had it understood with Mr. Frazer, and the record will bear me out, that the contents were not evidence.

THE COURT: I so held; they are not.

MR. HAMILL: Well, then, may I ask what is the necessity for putting in any circular?

MR. FRAZER: I might——

MR. HAMILL: He came to distribute a circular.

MR. FRAZER: Have you finished? May I speak?

MR. HAMILL: In a minute. Suppose he came and said, "I came to distribute the laws of 1902." Would your Honor permit that book to go in evidence?

THE COURT: Yes, I would.

MR. HAMILL: I beg pardon?

THE COURT: I would, yes.

MR. HAMILL: With all its contents?

THE COURT: Yes.

MR. HAMILL: To clutter up a record with things that are not legally part of a record?

THE COURT: As an exhibit, it is not cluttering up the record. The circular will be admitted. You may have an exception.

MR. HAMILL: I object.

THE COURT: Exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

(Circular marked Exhibit P-7.)

Q. Did you proceed then to distribute these——

MR. HAMILL: Ask him what he did, do not suggest to him——

MR. FRAZER: Well, I am just picking him up where he left off.

MR. HAMILL: All right.

MR. FRAZER: Continuity.

MR. HAMILL: All right.

A. We decided then that there were enough people assembled in Jersey City to go about with our business that brought us over there, of distributing these circulars. The three of us, Mr. Callahan, Mr. Zarella and myself, were about to start in in this activity. I had not time to take my leaflets out, though Mr. Callahan and Mr. Zarella did. Mr. Callahan got rid of, I think, three or four leaflets, and Joe Zarella two, and when I saw the police converging upon them and seize them and bring them away and take from them in no mild manner their leaflets, I retained mine in my pocket. I saw the futility of bringing them out. So a number of police I observed took Callahan and Mr. Zarella from the crowd, confiscated their leaflets, and brought them——

MR. HAMILL: Was all this——

MR. FRAZER: Now, I object to this continuous interruption, if it please the Court.

MR. HAMILL: All right. Then I object, unless he tells us he saw it.

THE COURT: Yes, only tell what you saw, please.

MR. FRAZER: That is what he is testifying to.

THE WITNESS: I saw this.

MR. HAMILL: All right.

A. (Continuing.) I was in the company of these two men when this happened.

I couldn't see the purpose of pulling out my leaflets to distribute them when the others, the leaflets of the other two with me, were confiscated. I saw that they were brought by policemen off from the crowd to a man in police uniform, probably of a high rank, who I learned later——

MR. HAMILL: I object to "probably of a high rank."

THE WITNESS: Of a high rank.

Q. Who was——

MR. HAMILL: How do you know——

Q. Who was later, you found out——
A. Who was later I found out to be Chief Walsh——

MR. HAMILL: Thanks. He ought to be grateful to you for your assistance to him, but I object——

Q. Who——
A. Chief Walsh of Jersey City.

MR. FRAZER: I merely continued the words he was using when you interrupted.

MR. HAMILL: No, you said which he found later was of high rank.

MR. FRAZER: That is what he said.

MR. HAMILL: No, let's see what he did say.

(Previous questions and answers read by the reporter.)

Q. Now will you proceed with your story?
A. Who I found out to be Police Chief Walsh.

MR. HAMILL: Now, who was right and who was wrong? All right, we will let that be undetermined. Go ahead. Examine him.

A. (Continuing.) I heard Mr. Callahan and Mr. Zarella proclaim that they had a right to distribute literature in view of the fact that there was——

MR. HAMILL: No, I object to that, what they said. I object to that.

A. (Continuing.) And they were refused arrest by the police, and the leaflets were taken.

MR. HAMILL: I object to that.

MR. FRAZER: Just one minute.

MR. HAMILL: What did the police do?

MR. FRAZER: One minute.

Q. You heard Mr. Callahan and your other friend say something to someone?

A. To the policemen who were confiscating the leaflets.

Q. Now what was it they said to the policeman who was confiscating the leaflets?

MR. HAMILL: Now, if your Honor please——

THE COURT: Yes.

MR. HAMILL: He can say he heard them say something to a policeman and as a result of that something that he did say, the police did not arrest him.

MR. FRAZER: The question now is, what he heard his companion say to the police who had him in charge. That is undoubtedly a part of the general picture of the case and I insist upon the right——

THE COURT: You may answer.

MR. HAMILL: I object, if your Honor please. Your Honor will grant me an exception?

THE COURT: Yes.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

A. Not remembering the exact words, I do know what they did say in effect was——

MR. HAMILL: No.

A. (Continuing.) We had a right to distribute this literature.

MR. HAMILL: I object to that.

THE COURT: No, you must give their words.

A. (Continuing.) They proclaimed to the police they had a right to distribute literature.

MR. HAMILL: I object, if he doesn't know the exact words.

Q. Your nearest recollection of what they said, Mr. O'Brien.

A. As near as I can recall they did say that they had a right and they were in their right legal bounds to distribute these leaflets and they questioned the police on their right to confiscate the literature.

MR. HAMILL: I object to that, "they questioned the police." What did they say, if anything?

THE COURT: That doesn't add anything. The police, as I understand, did confiscate the literature, is that right?

THE WITNESS: They did confiscate the literature.

MR. HAMILL: And as a result of what they said, the police took their literature.

THE WITNESS: I don't know if it was as a result of what they said, but the police took the literature.

MR. HAMILL: Well, when you use the word "confiscate" you mean take it?

MR. FRAZER: Wait a minute.

THE WITNESS: Forcibly.

MR. HAMILL: All right.

MR. FRAZER: If it please the Court, this witness is still under direct examination and I ask the Court to advise counsel that he is not to argue with my witness while he is under examination by me.

MR. HAMILL: It might be well to include in the admonition one to you not to be putting legal questions.

Q. Now, Mr. O'Brien, after this seizing of the literature, what did you see? What happened to your two companions?

A. I saw them, after the leaflets were taken, that they were just shunted off on into the crowd, and their arguments then with the police were futile, and the thing was ended then, as far as their activity is concerned.

Q. Now, did you see anything else that evening?

A. That same evening I still had retained my leaflets, and at a later time in the evening, I would say about eight-thirty, I attempted myself to distribute leaflets.

Knowing the possibilities of physical danger and the way my colleagues were handled, I notified some camera men on the scene; the first that I contacted was one from the New York *Times*.

MR. HAMILL: No.

Q. Go ahead.

MR. HAMILL: Your Honor please, here is what he says, that he tried to distribute leaflets that night; that knowing the possibilities of danger that he notified camera men. Now, his preparations for what he did are not relevant. Let him tell us just what he did.

MR. FRAZER: I think his preparations are very relevant.

MR. HAMILL: He might as well tell us, "knowing the possibilities of danger, I read the law books before I went up there," that he consulted somebody. What did he do?

THE WITNESS: I am telling counsel what I did.

THE COURT: Just tell what you did.

A. (Continuing.) I notified the camera men. The first I contacted was one of the New York *Times* and one from the Associated Press. I told these people——

MR. HAMILL: No, I object to what he told them.

MR. FRAZER: What he did, what he told them is what he did.

MR. HAMILL: No, what he did, not what he told them.

Q. Proceed, please.

A. I told them what I was about to do.

MR. HAMILL: I object to what he told them. Now, will your Honor rule?

THE COURT: Yes.

MR. FRAZER: I ask an exception to the ruling.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Then what happened, Mr. O'Brien?

A. I proceeded then to distribute leaflets. I went to a point on the curb where there were policemen about three feet abreast. I had the leaflets in my hand and started to distribute the leaflets. I think I got rid of around—it is possible I got rid of twenty leaflets. I had passed three police who were in doubt as to what to do; two started for me and changed their minds. When I got by the fourth of this cordon of police I was aware that they all were in back of me or near me and two of them directly upon me, hovering over me, taking my leaflets from me in no gentle manner, and I was shunted then into a crowd of photographs and reporters from various newspapers. I still had some leaflets in my pocket and upon being asked by reporters to give them samples of these leaflets I was distributing. I pulled these leaflets out of my pocket and commenced to distribute them among the representatives of the press. While I was doing this then one or two of the policemen who had previously engaged in handling me and taking my leaflets from me, came in to the scene and wanted to know who it was that was distributing leaflets there, and at the same time a group of people dressed in civilian clothes—two I remember were carrying canes, some with banners and medals upon their lapels, making them representatives of, one I remember

particularly, the Jersey City Veterans' Committee—and in the confusion these people were apparently trying to single me out——

MR. HAMILL: Oh, I object to that, I object.

Q. Go ahead, Mr. O'Brien.

MR. HAMILL: Well, now, he will not go ahead until we get a ruling on that "apparently trying to single me out."

THE COURT: I rule in your favor.

MR. HAMILL: I don't want to interrupt his prepared speech, but I have got to do it where it is irrelevant.

Q. Will you proceed, Mr. O'Brien, after the Court's ruling.

A. Well, when I saw this group of people more or less —no less than fifteen or twenty, I think it was anyway——

MR. HAMILL: I object to what he thought. We want to know what he saw or did; we are not interested in his thoughts.

A. (Continuing.) I came to the conclusion it was time for me to leave.

MR. HAMILL: I object to what conclusion he came to, your Honor, please.

MR. FRAZER: He came to the conclusion it was time for him to leave.

MR. HAMILL: It must have been unerringly correct but, of course, it is irrelevant in this case.

Q. What did you do, Mr. O'Brien?

A. I left the scene of activity.

Q. Now, during the period that the officers were taking the circulars away from you by no gentle means, did they say anything, any remarks made or passed by the officers?

A. There was so much commotion or noise, I just know that they were demanding the leaflets from me.

MR. FRAZER: Cross-examine.

Q. Or, by the way, were you at the meeting of April 30th at Journal Square?

A. No, sir.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. The Catholic Worker is a New York publication, is it?

A. Yes, sir.

Q. Who are the officers of the Catholic Worker?

A. The editor is a Dorothy Day, the managing editor is Bill Callahan.

Q. Dorothy Day lives where?

A. At 115 Mott Street.

Q. Is she in New York—I am not interested in her exact address—I mean in New York?

A. Yes.

Q. And Bill Callahan is of New York?

A. Yes, sir.

Q. And what is your position with the Catholic Worker, you say?

A. I have charge of the Catholic Union of Unemployed; I am secretary.

Q. And you had charge of it then?

A. Yes, sir.

Q. And you have charge of it now?

A. Yes, sir.

Q. Now, you knew when you came here, Mr. O'Brien, that there was an ordinance against the distribution of literature, didn't you?

A. I knew one had existed in Jersey City.

Q. Well, now, didn't you know on that date that there was an ordinance against the distribution of literature?

THE COURT: Well, might I correct you, Mr. Hamill? An ordinance which was interpreted to be against the distribution of literature,

MR. HAMILL: Well, now, just let us read that ordinance.

THE COURT: We are not going to argue legal questions.

MR. HAMILL: I mean your Honor has said that.

MR. FRAZER: May I call your Honor's attention to the fact that this date was May 7th, that counsel for the defendants have already conceded that on May 7th, after the Griffin decision, the ordinance as to this feature was unconstitutional.

MR. HAMILL: You are absolutely correct, sir, and I shall not—I had not the date in mind and I shall not pursue that line of questioning further.

Q. It was on May 7th, was it?

A. May 7th; yes, sir.

Q. There were thousands of people there, were there, Mr. O'Brien?

A. Yes, sir.

Q. There was a tremendous gathering there?

A. A tremendous gathering.

Q. A man would get hurt there even by the mere attempt to circulate through the crowd, wouldn't he?

A. I wouldn't know about that.

Q. Did you ever come to Jersey City before to distribute literature?

A. No, sir.

Q. And what caused you to come there on that night?

A. Because it was part of the activities of the organization I am connected with.

Q. To distribute literature on that night?

A. On that night, as in hundreds of other occasions.

Q. Why did you pick out that particular occasion, that is, the night of May 7th, when you knew there was a tremendous meeting there?

A. Well, our work is general in that line; we don't specify places and dates where we feel the need——

Q. But who—excuse me, had you finished your answer?

MR. FRAZER: He had not.

A. I hadn't, give me a chance.

Q. Why did you pick out that particular night of all nights?

A. Because as a Catholic organization we had a message we wanted especially to bring to Catholics and all people interested in civil liberties in Jersey City and Hudson County.

Q. Then it wasn't because you wanted to disobey any laws?

A. We don't go to disobey laws.

Q. Or any ordinances?

A. That's right.

Q. You just happened to come there that night and you found an enormous meeting there?

A. We just didn't happen to come there, we prepared to come.

Q. And you weren't aware that it was unlawful to do it?

A. We were aware that it was lawful.

Q. Oh, and——

MR. FRAZER: Counsel has already conceded its lawfulness. I cannot see the reason for pressing the point.

Q. And you were prevented from distributing the circulars?

A. Yes, sir.

Q. On that night?

A. Yes, sir.

Q. Your distributing them would have caused a great deal of confusion?

A. It did.

MR. FRAZER: I object.

Q. It did, yes. That's all.

Now, will you give me the office of—what's the name of that, the Catholic Worker?

A. Yes, sir.

Q. And where is their office?

A. At 115 Mott Street, New York City.

Q. 115 Mott Street. And who is the president of it?

A. The editor is Dorothy Day.

Q. Dorothy Day. And who is the owner of it?

A. The founders are the owners.

Q. Well, who are they?

A. Or they are not necessarily owners; it is maintained by its contributors.

Q. Well, who are the founders?

A. Peter Maurin and Dorothy Day.

Q. Peter Maurin and who else?

A. And Dorothy Day.

Q. How long has the Catholic Worker been founded?

MR. FRAZER: Is this material or cross-examination, sir? I think I will object to it. I have been very patient but I now object.

THE COURT: I will allow it.

MR. HAMILL: He says he came there as a representative of a certain organization and that was carefully put in by counsel for the complainant.

THE COURT: Go ahead.

MR. HAMILL: Now, I want to know what this organization is.

THE COURT: Certainly, I am going to allow you to know. I would like to know myself. So go ahead.

Q. How long has the Catholic Worker been founded?

A. It has been functioning a little over five years.

Q. A little over five years. Have you ever distributed it or sold it in Jersey City?

A. No, not myself.

Q. Well, has it ever circulated to your knowledge in Jersey?

A. We have a monthly mailing circulation here; it has been circulated and sold and distributed on the streets of Journal Square and elsewhere in Jersey City and at meetings throughout Hudson County and some places in Union City and Jersey City.

Q. And how long have you been connected with it?

A. Nine months.

Q. Since when, I mean nine——

MR. FRAZER: Merely a matter of mathematics.

MR. HAMILL: Well, I know, if we only knew where to start, nine months in the past from today?

THE WITNESS: Yes.

Q. And that was in what month?

A. Well, to be actively connected with it I think it was in September of last year or the latter part of August.

Q. In the latter part of August, 1937; what did you do before that?

MR. FRAZER: I object, going further into the personal history of this witness.

THE COURT: What is the purpose of that, Mr. Hamill?

Q. Who was it who employed you?

A. The staff of the paper.

Q. Are you a newspaper man?

THE WITNESS: Do I have to answer that?

THE COURT: Yes, there is no objection to answering that.

Q. I say are you?

A. No.

Q. I mean did you ever do the work of a newspaper man like reporting——

MR. FRAZER: Now, I object.

Q. (Continuing.) —cases or writing articles?

MR. FRAZER: I object. This has no relevancy to the case. It is not cross-examination. It does not test his credibility or do anything else. It is merely wasting the time of the Court. It is badgering a witness just for the sake of badgering; I object to further going on.

MR. HAMILL: No, it is unmasking a scheme put in for an evident purpose. Now, let's be perfectly honest with each other.

MR. FRAZER: May counsel state the scheme then?

THE COURT: State the scheme.

MR. HAMILL: I will state the scheme. It gives me a magnificent opportunity. It is the same scheme that counsel wanted to put in when they would have the Court ask the questions about race and religion. Now, state the scheme. Let us be perfectly clear with each other. Let us deal with our hands on the table and not dealing from the bottom of the deck. Here is the scheme. The scheme is to show that——

MR. FRAZER: May I ask——

MR. HAMILL: —these men——

MR. FRAZER: —if he is addressing the Court?

THE COURT: Mr. Hamill, would you care to address me?

MR. HAMILL: I beg your Honor's pardon, if by inadvertence I turned. It is to have the Court hold that these men could not be Communists and could not be

opposed to Hague because they are Democrats, New Deal Democrats and Catholics. Now, there is no deceit about that and there need not be. Now, that is the scheme and we will pin it on you before this trial is over.

MR. FRAZER: May I say to the Court that I think it was the Court that injected——

THE COURT: Mr. Hamill, I asked you if your defense was, or a defense was that these unions were Communistic?

MR. HAMILL: We will show——

THE COURT: Wait a minute, let me say right now that I think it would be a most useful thing to have exploited under sworn testimony the exact nature of these plaintiffs and I shall be glad to insist that under oath witnesses be called on that point.

MR. HAMILL: I will——

THE COURT: Because—wait a minute—because it would seem to me that once for all, not only as a matter of this case but as a matter of the general welfare of the United States it be determined on the sworn testimony, the exact nature of these unions from both sides.

MR. HAMILL: And of the purpose behind this whole movement. And I promise your Honor it will be done in accordance with your Honor's wishes and in full measure for the benefit not only of enabling your Honor to arrive at a correct decision but as your Honor suggested, for the benefit of the United States.

MR. FRAZER: Now may I say that this witness was called to the stand for the purpose of testifying to some facts; that he is not a party to the complaint, that he is not associated in any way with any of the plaintiffs, that he is merely here for the purpose of testifying to the facts, which he has done. He has been submitted to a rigorous cross-examination as to his personal

position and so on, and I think it is time that that type of examination should stop.

MR. HAMILL: That is all.

MR. FRAZER: That is all.

(Witness excused.)

JOSEPH ZARRELLA, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

THE CLERK: Zarella? Is that right?

THE WITNESS: No, Z-a-r-r-e-l-l-a.

MR. HAMILL: Give us your full name, please.

THE CLERK: What is your address?

THE WITNESS: 115 Mott Street.

THE CLERK: New York?

THE WITNESS: New York City.

MR. HAMILL: I want to get the name and address.

THE CLERK: 115 Mott Street, New York; Joseph Zarrella.

MR. HAMILL: Now, I notice right at this point that the other gentleman, the other gentleman's address is 115 Mott Street. Is that the headquarters of the paper?

MR. FRAZER: Yes, that is right.

THE WITNESS: That is the headquarters, and we live there, too.

MR. HAMILL: You have your own residence there, too?

THE WITNESS: That is right.

MR. HAMILL: I mean your apartment there, you live there?

THE WITNESS: That is right.

MR. HAMILL: You know what I mean by living; you have your home there?

MR. FRAZER: He has said so.

THE WITNESS: Yes, I know.

MR. HAMILL: Yes, all right. I mean it is not merely a mailing address; it is your home address?

THE WITNESS: My home address and my business address.

MR. HAMILL: All right.

Q. Mr. Zarrella, what is your connection with the Catholic Worker?

A. I am a member of the establishment.

Q. And on the occasion of May 7, in the company of Mr. O'Brien and Mr.——

A. Callahan.

Q. Mr. Callahan, you came to Journal Square, is that right?

A. That is right.

Q. Will you state what you saw, what happened to you, on that evening?

A. Well, we arrived at Journal Square at seven thirty that evening May 7th, and we walked about a block and a half, when we decided to distribute literature. Mr. Callahan had given out about three or four pieces of literature, and then I proceeded to give out the literature.

Q. Literature such as this, which is marked in evidence Exhibit P-7?

A. That is right. We had not been distributing the literature more than a minute when two cops came upon us

and tried to take from us forcibly the leaflets which we were giving out. As we held on to our leaflets, we said that we were within our constitutional rights of distributing these leaflets. We also quoted the supreme law, Supreme Court ruling, about no state, city or county had the right to prevent any citizen from distributing literature; and with that, we kept tusseling with the papers back and forth, finally he asked me my name and I told him that he had no right—I wouldn't give him my name or where I came from unless he arrested me. After they had taken the leaflets from us, this one policeman had grabbed Mr. Callahan and myself by the arm and proceeded to take us to the patrol wagon, and at that, he called to Chief of Police Walsh and asked if he could take us to the patrol wagon, and the Commissioner said no, he should let us go, just take——

Q. You mean Commissioner or Chief?

A. Well,——

Q. The Chief?

A. The Chief, Chief of Police. He said that he should let us go, just keep our leaflets.

Q. Now I show you a clipping, Sunday *News* of May 8th, 1938, and call your attention to the two pictures there. Do they fairly portray the conditions as you found them that night?

A. Well, it does. This was after we were taken off the sidewalk and were brought out into the street.

Q. Does the lower picture show you or anybody with you?

MR. HAMILL: I object.

A. Yes.

MR. HAMILL: I object to any discussion about the contents of the document.

A. (Continuing.) This picture here——

MR. HAMILL: Now wait until we get a ruling.

THE COURT: May I see it (handed to the Court). I don't believe, Dean Frazer, that is admissible.

MR. FRAZER: Well, for the purpose of the record, I would like to make the offer, sir.

THE COURT: Yes.

MR. FRAZER: I am offering a newspaper picture from the Sunday *News* of New York, May 8, 1938, showing conditions which the witness has stated faithfully portray the conditions at Journal Square on the evening of May 7, 1938.

MR. HAMILL: And, of course, I object.

THE COURT: It has various legends on it.

MR. HAMILL: He might as well—I object.

MR. FRAZER: And the lower one of which I wish to say in my offer I am putting in because it contains a picture of the witness Zarrella. If it be on account of the legend that the offer here is excluded, I will be willing to substitute another copy.

MR. HAMILL: No, it is——

MR. FRAZER: I make that offer.

MR. HAMILL: And I object. It is clear to anyone, particularly to Dean Frazer, that a man can't go on a witness stand and then say after giving us testimony, "And there is my photograph," put that in the record too, any more than he could put a plan that he has drawn of a certain situation.

MR. FRAZER: That has been done, sir.

MR. HAMILL: It has been used as pictorial testimony for the purposes of illustration, but it has never been allowed in the record except when the picture or plan is itself in issue. Now, you know that is the rule.

MR. FRAZER: I didn't know it.

MR. HAMILL: Oh, yes.

MR. FRAZER: I have had occasion to use photographs a number of times.

THE COURT: Take the legend off and mark it for identification.

MR. HAMILL: Any more than you can take a blackboard on which you draw a plan to illustrate the testimony—take the blackboard drawing and put it in evidence and send it into the jury.

THE COURT: I will look up the law.

MR. HAMILL: Your Honor knows the law.

MR. FRAZER: That is for identification.

THE COURT: I wish I did.

MR. FRAZER: It is P-8 for identification, I think, Mr. Reilly.

DEPUTY CLERK REILLY: Yes.

(Marked Exhibit P-8 for identification.)

Q. Mr. Zarrella, what happened to you after that, or what else did you see if anything of interest?

A. Well, after that incident we decided to walk around Journal Square. We proceeded to walk, and after walking a few blocks, we noticed a man in a light gray suit—he was about five six and a half—following us. We thought it quite amusing at the moment, and we proceeded to walk around and stop and drop in stores and look out the window to see if this fellow was still following us. Well, then we stopped in one drug store, made a telephone call, and then came out, and we all stood and looked at this fellow, and one of us pointed to him, and from that point on he just disappeared in the crowd. After that we decided that the streets were terribly crowded. We went into a restaurant and waited until Jerry O'Connell came, and in the meanwhile we proceeded to have some coffee. While we were in the restaurant Mr. O'Brien left us, and went out to dis-

ribute literature What we know of his incident was what e related to us.

Q. All right then, don't say it now. What did you do?

A. And after Mr. O'Brien came back we sat around for while. It was getting late, and we figured that Mr. O'Connell wasn't coming. We walked around the Square once more, stayed in the Hudson Tube Terminal, the station here, for a while, and watched the demonstration from one of the windows, and then from that point on we proceeded to go home.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. How long have you been connected with the—what is it?—the Catholic Worker?

A. That is right.

Q. How long have you been connected with it?

A. Officially I have been connected with the Catholic Worker about—I will be connected a year June 15th. I had been interested in the Catholic Worker for two years. I had quit my job a year ago June 15th to come down and live here and work with them.

Q. What was your job?

A. I worked for the president of the International Hydro-electric System, which is a subsidiary of the International Paper Company in the News Building.

Q. In New York?

A. New York, 220 East 42nd Street.

MR. HAMILL: That is all.

MR. FRAZER: That is all, thank you.

(Witness excused.)

WILLIAM CALLAHAN, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: And the address?

THE WITNESS: 115 Mott Street, New York City.

THE CLERK: 115 Mott Street.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Callahan, you are connected with the Catholic Worker?

A. In the capacity of managing editor.

Q. And did you have occasion to go to Jersey City, Journal Square, on the evening of April 30, 1938?

A. I did.

Q. And will you say what you saw there on that occasion?

A. Well, I went to Journal Square to act specifically as an observer. Knowing that Mr. Thomas was scheduled to speak or had announced that he would speak, I went to observe for myself and to see, much as Father Kernan did, whether those things could happen in the United States or not. I waited around the Square for some time. Mr. Thomas did not show up on schedule. When he did come into the Square the roadster in which he was riding came up to the exact point where he said he would speak. Mr. Thomas did not even have a chance to rise. He was dragged from the car and shoved around the corner into another waiting car, a sedan. From that point on I no longer saw him except later on in the evening at his house.

Q. Did you see any efforts made that evening for the distribution of circulars by anyone?

A. Yes, I did. After the Thomas incident. I was on my way down to the police station to find out what happened to Mr. Thomas. On the way I was with a small group, one of whom was Morris Milgram. Mr. Milgram attempted to hand out leaflets, I don't know the nature of them, and

the patrolman stopped him and insisted that he give up the leaflets.

Mr. Milgram told him he was acting within his constitutional rights——

MR. HAMILL: Never mind what Mr. Milgram told him.

Q. Go ahead.

MR. FRAZER: That is part of the scene.

MR. HAMILL: No, it isn't; no, it isn't part of the scene, the statement of another man not in the presence of defendants, where they would have an opportunity to answer it.

Q. Go ahead, Mr. Callahan.

A. However, standing off a few feet was a police sergeant. Milgram demanded that the policeman take him to the police sergeant——

MR. HAMILL: I object. I object to what Milgram demanded.

THE COURT: Sustained.

MR. FRAZER: Now, if it please the Court——

MR. HAMILL: I object to what Milgram demanded, if your Honor please.

MR. FRAZER: This is a statement made to one of the agents of the defendants.

MR. HAMILL: No, it was not.

MR. FRAZER: And as such is made in the presence of the defendants.

MR. HAMILL: Unless you show——

MR. FRAZER: He was a police officer.

MR. HAMILL: Unless you will show that he was authorized to receive it, if he was an agent. Then you

must first prove the extent of his agency. I think that is good law.

THE COURT: Read the question.

(Pending question and answer read.)

THE COURT: We have had that all, Dean Frazer.

MR. FRAZER: Yes.

THE COURT: Sustained.

A. (Continuing.) When the policeman brought Milgram to the sergeant, the sergeant told the policeman to let him go.

Q. That was the extent of the disorder which you saw specifically that night or——

A. That was the extent of the disorder. I was standing right next to Mr. Thomas' car, right against the front left fender, he was taken out—or rather right fender—he was taken out of the right side of the car.

Q. Now there were a great many people in the Square that evening?

A. There was a pretty big crowd.

Q. Turning from April 30th to May the 7th, were you in Jersey City with Mr. O'Brien and Mr. Zarrella?

A. I was.

Q. And will you tell what happened then?

A. We went over to Jersey City for the specific purpose of handing out literature and our reason for handing out——

MR. HAMILL: No, never mind your reason.

THE WITNESS: Very good.

Q. Just state briefly what happened, will you?

A. We went out to Journal Square and we walked half way down the Square, carrying some leaflets in our hands and some in our pockets. At a certain point a fellow, who I knew, came along and asked me for one of the leaflets, and

I decided that was as good a point as any to start giving them out.

MR. HAMILL: Never mind what he decided, if your Honor please. What did he do?

A. I started to hand out leaflets. I disposed of three or four, when I saw that Mr. Zarrella was doing the same thing, and I saw these policemen come upon us, two of them. I protested to the policeman when he seized the leaflets from my left hand coat pocket. I didn't let go immediately of the ones that were in my hands. I protested to him, told him of the Supreme Court ruling rendering such an ordinance unconstitutional and told him that I would not give up my leaflets unless I was arrested, that they were my private property. A police officer was standing a few yards away. I recognized him by the fact that he had a gold badge instead of a silver one; and I demanded that the policeman bring us over to him so that we could protest.

We did that and he merely snarled "Take them away from them," which they did. I asked him his name and he said it was Chief of Police Walsh. The policeman seizing the two of us by the arms started across the street with us and said to the Chief of Police, "Shall I take them in?"

He said, "No, let them go."

Q. By the way, what did the policeman who took the circulars do with the circulars?

A. How he disposed of them I have no means of knowing. He took them across the street and I lost him in the crowd.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. How long have you been connected with the Catholic Worker?

A. Approximately four years.

Q. And you are the managing editor, are you, Mr. Callahan?

A. I am.

Q. Do you know Mr. Norman Thomas personally?

A. I did not know him personally until that night.

Q. Well, have you ever met him at all?

A. I met him that night after he had been deported from Jersey City, I went to his house.

Q. In New York?

A. In New York.

Q. Why did you go to his house?

A. In a reportorial capacity.

Q. To get from Mr. Thomas his——

A. His side of the story.

Q. —side of the story.

A. And also to tell him if he should need a witness to it I was willing to act as one.

Q. All right, I think that's all, Mr. Callahan.

MR. FRAZER: That's all, Mr. Callahan. Thank you.

Is Mr. Francis Hunter here?

MR. HAMILL: If it isn't waking up old questions look at the artfulness and injustice of what counsel wanted to put in the record with this picture.

THE COURT: I didn't admit it so——

FRANCIS HUNTER, called and sworn on behalf of the plaintiffs, testified as follows:

(Address 155 Magnolia Avenue, Jersey City.)

DIRECT EXAMINATION.

By MR. FRAZER:

MR. FRAZER: Might I substitute for Exhibit P-8 for identification a copy which has merely the lower picture in it?

MR. HAMILL: That is for identification?

MR. FRAZER: Yes.

THE COURT: There are some legends still on it.

MR. FRAZER: Are there legends on that? You mean newspaper legends?

THE COURT: Yes.

MR. FRAZER: I thought you meant the writing. We will take the legends off.

MR. HAMILL: It is all merely for identification.

MR. FRAZER: Might I, for the purpose of identification, merely ask Mr. Zarrella whether the photograph here shown is that of himself?

MR. HAMILL: I object to that.

MR. FRAZER: Otherwise the picture has no significance.

MR. HAMILL: Right, the picture has no significance. And then you want Mr. Zarrella to say, "That is my picture." You are something like the boy who drew the picture of the animal and under it put "This is a horse." You want Mr. Zarrella to say that's his picture.

MR. FRAZER: Yes, I want him to say it is.

MR. HAMILL: It may be your or my picture.

MR. FRAZER: I will put it his way: Whose picture is this in shirtsleeves?

MR. HAMILL: Let me know any man on any basis of reason who could tell with that outline.

MR. FRAZER: May I ask that question, sir?

JOSEPH ZARRELLA, recalled.

MR. HAMILL: I object to asking it.

By MR. FRAZER:

Q. Can you tell me whose picture it is of the man in sweater or shirtsleeves back of the two officers?

A. That is a picture of me.

MR. HAMILL: I object to the characterization even; the picture doesn't show whether it is a sweater or shirtsleeves.

THE WITNESS: It is a gray sweater.

MR. HAMILL: It is a white blotch.

THE WITNESS: I had a gray sweater, I was wearing a white short similar to the one I am wearing at the present moment. I had a gray pair of pants and brown shoes. This cop here is the one that took the leaflets away from Mr. Callahan and this one is the one that took the leaflets away from me.

Q. That is the one in the background?
A. In the background.

MR. HAMILL: Now, since this is a fair sample of the evidence, I ask the Court if he would look at that and see if he would pick out those things as he has identified them.

MR. FRAZER: Will you mark it now without the etiquette, as P-8 for identification.

THE COURT: I haven't admitted it. Go ahead, Dean Frazer.

FRANCIS HUNTER, resumed.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Hunter, what is your business?

A. I am executive secretary for Local 16 of the Industrial Union Marine and Shipbuilding Workers of America.

Q. Affiliated with the CIO?

A. They are a CIO affiliate, yes, sir.

Q. And in your capacity have you had occasion to have meetings of your Union anywhere in Jersey City?

A. Yes, sir, for a period of about seven or eight months we met at 160 Mercer Street, Jersey City, a place known as Peoples Center.

Q. And did you always meet alone or on occasion with other unions?

A. Occasionally we had what we called open nights where the Local membership and any outsiders would be invited to listen to any speaker we would have present.

Q. Now, will you state what kind of a meeting—was there a meeting arranged for for December , 1937?

A. Yes, it was some time during the month of November when I was contacted by the Regional Director of the CIO and asked if it would be all right for us to conduct a joint meeting. He knew of our open meetings and he said it would be fine if the regional office and your local would get together for a mass meeting. I thought it would be all right and I agreed to it and arrangements was made for the mass meeting for December the 3rd.

Q. Whereabouts?

A. At 160 Mercer Street, Peoples Center.

Q. And did you contract for the meeting place that night?

A. The Local had already contracted for that place for as many meetings as they wished. We rented the place by the month.

Q. Now, will you tell me what happened in regard to that meeting?

A. Well, I believe it was one or two days prior to the meeting——

MR. GLAVIN: I object to what he believes.

MR. FRAZER: That is an approximation.

MR. GLAVIN: You know it and I don't.

MR. FRAZER: Well, when he says "I believe it was one or two days" that means approximately two days.

MR. GLAVIN: Suppose you let him tell it without "believing."

Q. Omit the word "believe," will you?

A. Approximately one or two days before the meeting I received word from the people at Peoples Center that the meeting would have to be called off and I wanted to know why, and they said that the police——

MR. GLAVIN: Just a minute, I object to what they said.

THE COURT: When you say the people——

THE WITNESS: The manager up there at the Peoples Center.

THE COURT: What is his name?

THE WITNESS: It is big name, I couldn't tell you, I never could say the man's name. He is a Ukrainian. It is one of those names you have to stumble all over when you try to say it.

THE COURT: Could you get us his name?

THE WITNESS: I can, from my records. I would rather write it down than say it.

Q. Will you do that later for us and submit it?

A. I will do that, yes.

Q. Thank you, Mr. Hunter. Now, the gentleman with the unprounceable name did what in regard to the meeting?

A. The manager of the hall, we called him, he told me——

MR. GLAVIN: Just a minute, I object to what the manager told him.

THE COURT: Did he cancel your meeting?

THE WITNESS: He cancelled our meeting. He told me the meeting was off.

Q. Did he assign any reason?

MR. GLAVIN: I object to any reason. He can bring the man in here and he can testify himself. It is purely hearsay. It certainly cannot bind these defendants.

THE COURT: We are going to bring him in.

Q. Did he assign any reason?

MR. GLAVIN: I object to his testifying to what reason he assigned.

THE COURT: Sustained.

MR. FRAZER: May I state to the court I am not asking what the reason was. Did he assign any reason.

THE COURT: I beg pardon, that is my misunderstanding. Did he?

THE WITNESS: Yes, he did.

MR. FRAZER: Now, I would like to ask the question that will probably be objected to.

Q. What was the reason assigned?

MR. GLAVIN: I object on the ground it is purely hearsay and cannot bind these defendants.

THE COURT: Sustained.

MR. FRAZER: Exception.

(Which exception is hereby allowed and sealed accordingly.) (Sealed)

Q. Now, what has been your experience about getting other halls since then?

A. Well, it seems as if, no matter where I go——

MR. GLAVIN: I object to what it seems as though. State facts.

A. I went to several places and when I told them who I represented——

MR. GLAVIN: Just a minute, I object to this general testimony. If he went to a specific place let him testify where, who he saw and what happened.

THE COURT: Can you do that?

A. Not offhand I can't.

MR. GLAVIN: Then I object to his testifying along that line.

Q. You have gone, have you, to other halls?

A. I have.

Q. Have you succeeded in getting them?

MR. GLAVIN: I object.

A. Only one.

MR. GLAVIN: On the ground it is immaterial.

Q. What was that?

A. A church.

MR. GLAVIN: Just a moment. Do you concede my right to make an objection?

MR. FRAZER: Oh, yes, go ahead, Mr. Glavin.

MR. GLAVIN: I object to his testifying to any conversations or any activities unless he can specify the hall, the person that he spoke to and what happened.

THE COURT: As I understood him, he was about to specify a church. Go ahead.

A. All right. I did contact Dr. Hollingshead of the Good Will Industries Organization and asked him if he would let us use the hall where they held a Norman Thomas meeting. He agreed that we could use that hall and we used that hall for a short period of time but it was small, inadequate and then we had to leave there. Since we left that place we have been meeting in Newark on Plane Street.

Q. Have you been able to get any halls in Jersey City since this December 3rd meeting?

A. No.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. You say you are regional director of what?

A. I am not a regional director; I am executive secretary of a Local union.

Q. What is the name of it?

A. Local 16, Industrial Union of Marine and Shipbuilding Workers of America.

Q. Is your Union out on strike now?

A. No, sir.

Q. Were they out on a one-day sit-down strike yesterday?

A. No, sir.

Q. You are affiliated with the CIO, aren't you?

A. Yes, sir.

Q. Weren't all the CIO unions out on a one-day sit-down strike yesterday?

A. No, sir.

Q. Do you read the papers?

A. Yes, sir, I know what you are referring to, sir.

Q. What's that?

A. I know what you are talking about, sir, but you don't.

Q. Don't you belong to that branch?

A. No, sir.

Q. Of the CIO?

A. No, sir.

Q. You don't belong to that branch?

A. No, sir.

Q. How long have you been executive secretary of Local 16 of the Industrial Union of Marine Workers?

A. Since March 22, 1937.

Q. Is that when you moved to Jersey City?

A. Yes, sir.

Q. Where did you live before that?

A. Camden, New Jersey.

Q. Did you belong to any Union in Camden?

A. I did.

Q. What Union?

A. I belonged to Local 1 of the Industrial Union of Marine and Shipbuilding Workers of America.

Q. Why did you come to Jersey City?

MR. FRAZER: I object.

THE COURT: Let him answer. Go ahead.

A. Local 16 needed a man of my experience and that is why I came up here, to assist the Local boys.

Q. Were you directed by anyone connected with the CIO to come to Jersey City?

A. No, sir.

Q. You just came of your own accord?

A. No, I came at the request of the Local executive board.

Q. Who is the Local executive board?

A. Well, they are a whole list of names—if you want to take them all down——

Q. Well, who on the board requested you to come to Jersey City?

MR. FRAZER: Now, I object, sir, this is getting into pure folly.

THE COURT: I think myself it is but go ahead.

A. Daniel Deans, president; George Redpath, vice-president; Carl Neugebauer, recording secretary of the Local; Daniel Mulhern, trustee; William Sallus, trustee; James Neville, trustee; the Shop Stewards and members of the executive board are as follows—I will try to give them as I recall them from memory.

Q. That's all I want to know about it. Where do you hold your meetings?

A. Our Local office is 588 West Side Avenue; the executive board meetings are held there. General membership meetings are held at 295 Plane Street, Newark.

Q. What were your instructions when you were told to go to Jersey City?

A. Merely to act in the capacity as executive secretary, to attempt to get the Local office functioning in a business-like manner and to act as a representative of the Local in adjusting grievances between the company and the Union, any member of the Union.

Q. Did you know anything about the ordinance in Jersey City prohibiting the holding of public meetings in public places without a permit?

A. I know nothing about public meetings, I had nothing to do with public meetings.

MR. FRAZER: I object. He said nothing about——

THE COURT: I thought he was talking about private meetings.

MR. FRAZER: No, he is talking about public meetings now.

MR. GLAVIN: I am just trying to show the purpose for which this man was sent to Jersey City the same as the rest of the people who came in around March, 1937.

THE COURT: He told you what his purpose was and he gave you the names of the executive committee.

MR. GLAVIN: I am not satisfied that is the purpose; I am trying to find out.

THE COURT: Then you can call the other members of the executive committee.

A. I will be glad to give a more accurate reason if they want it.

THE COURT: Go ahead.

A. (Continuing.) Local 16 was a new Local in our organization. The Local men up here had no experience at all in conducting an organization. The Local men knew nothing of parliamentary procedure, didn't know how to keep the records in the office; they only had one young girl 19 years of age in the office trying to do that work. The thing was in sort of a half—well, it was sort of a mixed-up affair. The records were several months behind in date, and more than that the Local negotiating committee had had difficulty in getting along with the Industrial relations manager of

the company, which the employees of that company are members of our Union, and they felt as though they needed someone else who had a little more experience to come up there and help them get started until such time as they could train a local man for that particular work. At that particular time I was president of Local No. 1.

MR. GLAVIN: If this is for my benefit I submit to the court that I am not interested.

THE COURT: I thought you asked for his reasons more specifically.

MR. GLAVIN: I wanted to bring out his reasons in my own way by questions.

MR. FRAZER: He asked the question. I would now like the witness to complete his answer.

THE COURT: He may answer.

MR. GLAVIN: If you want the answer, it is all right with me.

MR. FRAZER: I don't want the answer, I want his reply.

A. (Continuing.) I resigned as president of Local 1 and came to Jersey City and acted as executive secretary for Local 16. I attempted to adjust grievances that could not be adjusted between the Shop Stewards and the Local grievance committee of the Union and the Industrial relations manager. I acted in that capacity up until the present time, carrying on the ordinary business of the Local, getting the Local office into first-class shape, getting the records up to date and taking up all grievances that cannot be adjusted by the Local committee with the Industrial relations manager or the president of the company, and that is what I have been doing up to the present time.

Q. All right. And were you subpoenaed here as a witness?

A. I was called yesterday and asked to come over here today.

Q. To whom did you tell your story so that they might call you here as a witness?

MR. FRAZER: I object.

THE COURT: What is the purpose of that?

MR. GLAVIN: Just to find out why he is here, what the purpose of bringing him here is. He must have told somebody.

MR. FRAZER: If you want to learn whether he has discussed this matter with counsel, he did.

MR. GLAVIN: I don't want you to testify to it, no; I want him to testify to it.

THE WITNESS: I have no objection to answering.

A. (Continuing.) The CIO and myself, that is, Mr. Carney, regional director of the CIO and myself arranged for the June 3rd meeting, which failed to come off, and Mr. Carney asked me if I would come over to testify to that fact, and I agreed to do that, that's all.

Q. That's all.

By MR. FRAZER:

Q. On December 3rd, you meant. That was the December 3rd meeting? You said June 3rd. I think it was by inadvertence.

A. No, the December 3rd meeting.

By MR. FRAZER:

Q. Now, where are the majority of your union members located?

A. They are pretty well scattered. According to a check-up we made recently, about 50 per cent. of our members reside in Jersey City; the other 50 per cent. is pretty well scattered; I would say about 30 per cent. in Newark

and then the rest of them is scattered throughout the outlying districts.

Q. In the period during which you have been representing the union, have you had any strikes?

A. Yes, sir—not since I have been representing the union, no.

Q. That is what I mean.

A. No, not since I have been representing the union.

Q. Your disputes have been settled?

A. Yes, sir.

MR. FRAZER: That is all.

MR. HAMILL: That is all.

(Witness excused.)

THOMAS HURLEY, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: Where do you live, Mr. Hurley?

THE WITNESS: 173 Bleecker Street in Jersey City.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Hurley, you are a——

THE CLERK: Thomas Hurley, 173 Bleecker Street, Jersey City.

Q. Mr. Hurley, I show you a card; have you seen it before?

A. Yes, sir.

Q. Ever have one in your possession before?

A. Yes, sir.

Q. Where did you get it?

A. From a boy at the Five Corners, Jersey City.

Q. Under what circumstances did you get it?

MR. GLAVIN: Oh, I object to it unless we find out what it is.

THE COURT: Let's find out first who this young man is. I don't know who he is.

Q. Who are you, Mr. Hurley?
A. I am a citizen of Jersey City.

THE COURT: What is your business?

THE WITNESS: I am unemployed.

Q. Now will you tell us the circumstances under which you got that card?

MR. GLAVIN: I object to the circumstances under which he got the card unless we know what the card is.

THE COURT: Let me see the card (handing to the court).

MR. FRAZER: I understood from Mr. Hamill that the contents of cards were not material.

MR. GLAVIN: No, but you are going to try to get them in.

THE COURT: Well, I will make the same ruling with respect to this card that I did before. It seems to me this must be rebuttal testimony.

MR. FRAZER: I want to show discrimination, sir; which I think is part of my case in chief. I want to show that these other circulars were received and these circulars were permitted, and the circumstances under which they were permitted. That is the purpose of my offer.

THE COURT: This isn't a circular.

MR. FRAZER: Well, it is printed matter.

THE COURT: Let me ask, just before saying what is on the card, Mr. Hurley, how did you receive it?

THE WITNESS: From a boy.

THE COURT: Where?

THE WITNESS: At the Five Corners, Jersey City.

THE COURT: You mean on the street?

THE WITNESS: Yes.

THE COURT: Handed to you, was it?

THE WITNESS: Yes, sir.

THE COURT: Do you know who the boy was?

THE WITNESS: No, I do not.

THE COURT: Were there any police officers present?

MR. GLAVIN: Of course I object; with all due respect, I object to the Court's interrogating him about this card.

THE COURT: You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

THE COURT: Were there any police officers present?

THE WITNESS: There was one stationed directly opposite, on the other corner there, directing traffic, in the booth.

THE COURT: Did he see this card handed to you?

THE WITNESS: No, I doubt whether he did.

THE COURT: I don't think it is admissible. Exception.

MR. FRAZER: Wait a minute. I haven't finished my examination.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

Q. Do you know where the boy got the card from?

MR. GLAVIN: Oh, I object to that. It is merely hearsay.

MR. FRAZER: No, it isn't.

THE WITNESS: I seen it.

Q. You saw it?
A. Yes.
Q. Now where did you get it?
A. About eleven o'clock that morning——

MR. GLAVIN: Just a minute. I object to this question on the ground that it can't in any way bind these defendants, what the boy did at Journal Square or any place else, unless it was in the presence of them, or unless it can be shown that they gave him a permit to distribute these circulars.

THE COURT: Dean Frazer contends they were distributed without permit, in discrimination of your ordinance.

MR. GLAVIN: I know what he contends.

THE COURT: Now I am trying to find out if any police officers saw any of this distribution. If they didn't, I shall exclude it.

MR. FRAZER: What I want to prove is that an official of Jersey City directed this distribution.

MR. GLAVIN: I object to Dean Frazer testifying unless he is sworn.

MR, FRAZER: No, I am not testifying. I am making my offer, so that the Court——

THE COURT: Unless this witness saw such a circumstance.

Q. Did you see the circumstances under which the boy got the card?
A. I did.

Q. Now, will you state what those circumstances were?

MR. FRAZER: I haven't offered the card yet.

A. About eleven o'clock that morning I was getting back from New York City from looking for employment. I saw a man who I know to be Mr. Whalen, employed as a bus driver at Journal Square by the City or County.

MR. GLAVIN: I object to it on the ground that it certainly can't bind these defendants, any one employed by the county or even employed by Jersey City as a bus driver, unless it is shown that the defendants directed him to give out these circulars or they were given out with the defendants' permission.

THE WITNESS: I am coming to that.

THE COURT: Go ahead.

A. (Continuing.) This man Whalen had a bunch of boys around him, I should say from about twelve to fifteen years old, say about eight or ten boys, and he had a pile of these cards, and he gave each one of them so many, to go around and distribute them. He said, "Don't forget, and get rid of them."

So about half an hour after, I walked away from Journal Square going home, got to the Five Corners, and there was a couple of boys there handing them out; one boy handed me this one.

MR. FRAZER: Now, I would like to offer this card.

THE COURT: We will have to know more about Mr. Whalen. I will exclude it.

MR. GLAVIN: I move——

MR. FRAZER: May I have it marked for identification?

THE COURT: Yes, you may.

(Marked Exhibit P-9 for identification.)

MR. GLAVIN: I move that the testimony be stricken at this time from the record.

MR. FRAZER: I will ask an exception to the Court's ruling.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

MR. FRAZER: Cross-examine.

MR. GLAVIN: No cross-examination.

MR. FRAZER: All right.

(Witness excused.)

THOMAS COMETA, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: And where do you live?

THE WITNESS: 15 Searl, Pittston, Pennsylvania.

THE CLERK: 15 Searl Street, Pittston, Pennsylvania?

THE WITNESS: Yes, sir.

THE COURT: A little louder, please.

THE CLERK: Thomas Cometa, 15 Searl Street, Pittston, Pennsylvania.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Cometa, what is your business?

A. I am a CIO field representative since June 1936.

Q. And are you engaged in this section of the country?

A. No, sir, I am working out of the southern end of New York State.

Q. Were you earlier?

A. Yes, sir.

Q. And when were you here in this section?

A. I was assigned here on May 10, 1937, and I was here up to December 10, 1937.

Q. Now do you remember opening up any headquarters for your organization in Jersey City?

A. Yes, sir.

Q. And whereabouts were those headquarters?

A. Academy Street.

Q. And where abouts—when did you open them?

A. The early part of October 1937.

MR. GLAVIN: I didn't get where he said they were.

THE REPORTER: Academy Street.

MR. FRAZER: Academy Street.

Q. 216 Academy Street, is that right?

A. That must be the number, but I am not positive. I don't remember the number.

Q. Now will you state what your experiences were after the opening of the offices in October?

MR. GLAVIN: Oh, I object to what his experiences were, unless they are directed to some particular activity.

Q. With officers of the law in relation to the activities of the CIO?

THE COURT: You may answer.

A. On October 28, 1937 we had arrangements made—that is, me and another field representative—to meet the management of the Standard Cap and Seal Corporation of New Jersey. We had a group of workers there that request organization, and after we got them signed up and we knew that we had the overwhelming majority of the plant as to bargain representation, we asked the management of this corporation for bargaining conference. The management agreed to meet the representative of the CIO, and a committee of the workers from the plant. That conference, like I just stated, was arranged for Thursday, October 28th, at one o'clock.

Thursday morning, October 28th, me and Samuel Macri, that were both assigned to this conference, went up to Jersey City. First we called at the office that we had established on Academy Street to hear reports from some of the workers from the American Home Product that is located too in Jersey City. We stood at the office there until about twelve thirty and we felt that in a half hour's time——

MR. GLAVIN: I object to what he felt.

THE COURT: Yes.

Q. What did you do?

A. Well at twelve thirty then, if that is the way you want it, we started out to go to this appointment with the management of the Standard Cap and Seal that is located on Bay Street, Jersey City; driving down, and we were close, one or two blocks, from Bay Street, Jersey City, an automobile pull up. The automobile was occupied by three; one was a sergeant in uniform, two in civilian clothes; and they hailed us to pull to the curb. I was setting alongside the driver, I don't even own an automobile, never did, I don't know how to drive one; the driver pulled to the curb and we stopped. The sergeant in uniform got over to the car, got around to the right side of the car, and asked us where we was going. No, rather, my mistake, "Where you from?" the sergeant said.

I said, "Newark, New Jersey."

He said, "What are you doing in New Jersey with a Pennsylvania license tags in the car?"

But before an answer was given to him he had, the sergeant had, already opend the door on the right side of the car and opened a little compartment in the dashboard. In the meantime, while this was taking place, the one plainclothesman, I figure, I am not sure——

MR. GLAVIN: I object to any plainclothesmen unless——

MR. FRAZER: The man in civilian costume.

MR. GLAVIN: I was just waiting until he got finished, because he hadn't said anything yet, to object and move to strike out his testimony unless he can identify the man who he says was a sergeant, either by name or badge number.

Q. Will you continue, Mr. Cometa?

THE COURT: Can you identify him?

THE WITNESS: Your Honor, the only identification that I have is that the car bore initial——

THE COURT: What was that?

THE WITNESS: MG, and I remember the license number was H-1618.

MR. GLAVIN: Well I think the Court will take judicial notice of the fact that MG licenses do not bear county initials, so he could not identify it by that number.

THE WITNESS: Well——

MR. GLAVIN: Just a minute. There is no question pending.

THE COURT: I thought MG—well I don't know what MG means.

MR. FRAZER: It means municipal government, I think.

THE COURT: What?

MR. FRAZER: Municipal government.

THE COURT: Municipal government, yes. Was he in uniform?

THE WITNESS: The sergeant, yes, sir. I recognized him because he had his chevrons, whatever you call them, on the arm.

THE COURT: Go ahead.

Q. Now, will you proceed?

A. Well——

MR. GLAVIN: Has the Court ruled on whether or not this testimony is competent?

THE COURT: I will allow it. You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

A. Like I was saying, the two gentlemen in civilian clothes, one stood on the curb, the other one came in from the left side of the car, while we were out, and searched the inside of the car, and pulled out the back seat and ramming the tools there and——

Q. That was the sergeant doing that?

A. I beg your pardon?

Q. That was the sergeant?

A. The sergeant, no, sir; the sergeant was looking in the compartment, that was on the dashboard, and he pulled papers there; one was the memorandum agreement that we had already drawn to be presented that day to the management of the Standard Cap and Seal, and there was there membership card, as we call them, CIO membership card, but blank, with no signature there. Well, the sergeant said, "Now I know who you people are."

I said, "Yes, sir, that is right."

I answered because I was on the right side of the car.

I says, "We are representative of the CIO, field representative."

"Well," he said, "what business have you got over here?"

I said, "We going on an appointment conference."

"An appointment conference?" he said.

I said, "Yes, sir."

Well, in the meantime he said, "Stand up."

Well then I stood up there and he searched me. Of course I didn't have no weapons of any kind. After he searched me he pushed me on the side and then he searched the driver. After he got through——

Q. Who was the driver?

A. Samuel Macri; he was the driver, and owner of the car, too. After he got through searching, he said, "Whereabouts this conference going to take place?"

I said, "On Bay Street at the company's plant. We are meeting the management in the plant."

"Well," he said, "let me warn you that if I catch you soliciting on the street for any organization; only God will help you."

I said, "Sir," and this is the truth, "I am not soliciting any place. Ever since I have been an organizer, this solicitation came from the workers themselves, and when the workers come and make requests for organization, then we cooperate as to their request."

We went up first to the Standard Cap and Seal plant. We met the management, and we stayed there until we got through the conference, which was about two thirty that afternoon. Then I returned to the headquarters in Newark.

Q. Now Mr. Cometa, before that episode, have you anything to say about the action of the police in regard to your headquarters?

A. When we established the headquarters in Academy Street, Jersey City, I noticed there that an automobile stood there and it was there in one spot every morning and every day that I happened to be there; this car was parked right at the intersection of Academy and Summit Street of Jersey City; and the car was parked so it was facing that office on Academy Street. I never saw a uniformed officer occupying the car, but I do——

MR. GLAVIN: One moment. I move that this testimony be stricken on the ground that it is immaterial.

THE COURT: Yes, unless he identifies them.

MR. FRAZER: Well, I want to see whether he doesn't. I think he is coming to it.

THE COURT: Strike it out anyway until he identifies them.

THE WITNESS: There was two gentlemen in civilian uniform there, and some time one. That took place all the time, and every day that I was in that office.

Q. Did you ever see those men in conjunction with any police operations?

MR. GLAVIN: I object to it on the ground that it is immaterial; there might have been a hundred cars around there, parked there, every day.

THE COURT: Did you get the number of that car?

THE WITNESS: Yes, sir.

THE COURT: What is it?

THE WITNESS: I have it right here (producing memorandum), because I made a memorandum. The car license was H-35427.

THE COURT: Well, unless the car is identified, which is easily done——

MR. GLAVIN: Well, assuming——

MR. FRAZER: I will call upon the defendant to admit that because if it be within their power and knowledge, they can admit—I will ask them——

MR. GLAVIN: Why don't you just ask to prove your whole case for you?

MR. FRAZER: Not at all. I think we have under the statute the right to call upon the opposing party to make certain admissions, to save us the proof, if it be within their power, and I would ask you to admit that car number H-35427 is a car belonging to the City of Jersey City.

MR. GLAVIN: In the first place you are asking an impossible admission. In the second place you are just wasting your time asking it, because I won't admit anything of the kind.

MR. FRAZER: Then we will have to bring the listed Jersey City cars here.

MR. GLAVIN: Well, bring it in, and I say to the Court that even if it was a police car and belonged to Jersey City, it had a perfect right to stand on the corner every day in the year, if it wanted to. What effect has that got or how is it material to the issue? After all, the police are entitled to patrol the streets and stand on the streets and do.

THE COURT: I somewhat question that a police car has a right to stand outside, for instance, your house.

MR. GLAVIN: He wasn't outside the door, he was on the corner—if it was a police car; I don't know whether it was or not.

MR. FRAZER: We will take this up by another witness, Mr. Macri, when he is sufficiently recovered from his injuries.

MR. GLAVIN: You can check it up if you like, but I submit to the Court if it was a police car it had a perfect right to be there and this testimony should be stricken from the record.

THE COURT: I will deal with the issue when we find if it was a police car or not.

MR. GLAVIN: It is an attempt to create a presumption or something.

MR. FRAZER: Do you wish to cross-examine Mr. Cometa?

MR. GLAVIN: Yes. I might say that the police action in stopping Mr. Cometa, whatever his name is,

car and examining the car, searching the car and questioning the occupants is the custom of the Jersey City police with all out-of-town cars where they think that the passengers are suspicious looking characters.

MR. FRAZER: May I ask counsel whether they are also accustomed to taking the private property of the occupants?

MR. GLAVIN: You may ask what you like but I am not on the witness stand.

MR. FRAZER: No, you just made an admission. I was wondering whether you would be willing to extend it.

MR. GLAVIN: I won't admit anything, so don't bother asking me.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. What did you say your position was?

A. I am a field representative.

Q. Of what?

A. CIO.

Q. When did you come to Jersey City?

A. Last May 15, 1937.

Q. Where were you located before that?

A. I worked before that among the automobile workers in the Detroit area.

Q. Oh, you were out there during the slaughter in Detroit?

MR. FRAZER: I object.

Q. The sit-down strike?

A. I don't know anything about slaughter.

Q. Well, were you engaged in the sit-down strike out there?

A. No, sir.

Q. You had nothing to do with it?

A. No, sir.

Q. You knew about it, I suppose?
A. Surely, I read in the paper about it.
Q. But you weren't in it?

THE COURT: Is it your view——

A. If you wanted to know my activities I will give it to you, I will tell you exactly the area I worked from and what I done, because I am not ashamed and I am not afraid of.

THE COURT: I would like to ask right now, Mr. Glavin, is it your view that it can be the province of this Court to try one or another labor policy, whatever it may be, or however one might feel about it privately?

MR. GLAVIN: No, but I think I have a right to find out this man or any other witness' background in connection with labor activities that he may have conducted at other places, and I think it is a well known fact that the automobile industry in Detroit had a lovely time during a certain period with the CIO, and he just testified that he was engaged in CIO activities among automobile workers in Detroit before he came to Jersey City.

MR. FRAZER: He has a right to give the background, you know.

THE COURT: Is it going to be a defense that the plaintiffs indulged in labor activities which you think are obnoxious?

MR. GLAVIN: We are——

THE COURT: Is it going to be a defense in this case?

MR. GLAVIN: Well, I am not offering it as a defense; this is cross-examination.

THE COURT: Cross-examination, of course, I need hardly tell you, Mr. Glavin, is limited to the issues. I mean I am not passing on the issues. I would be just glad to have you state them.

MR. GLAVIN: I think that it is important to find out what the background of these witnesses are that came into Jersey City so suddenly.

THE COURT: You have made several references now, Mr. Glavin, to sit-down strikes. It would not be, I think, exaggerating to say that one would gather from your tone that you disapproved of them.

MR. GLAVIN: I most surely do disapprove of them.

THE COURT: It wouldn't be becoming, of course, for the Judge presiding to express either approval or disapproval. I am only asking you is that going to be one of the defenses? If it is, I would like to know it.

MR. GLAVIN: If it develops in the course of the proof by the plaintiffs that that will be a defense, it will be. I cannot tell at this time just what defense testimony will be put in. I don't think that we should sit by and permit any witness to come on the stand and testify to what he presumed to be the activities of certain people in Jersey City without the right to cross-examine him and find out where he came from, why he came to Jersey City and what he was doing in Jersey City.

THE COURT: He told you that he came from Detroit. As a matter of fact, this witness told you that he had nothing to do, as I understand it, with sit-down strikes; is that not correct?

THE WITNESS: That's right. Detroit isn't my home, your Honor; I was assigned there temporarily.

Q. Why did you come to Jersey City?

A. Because I was assigned. I have had more than one assignment.

Q. Who gave you the assignment?

A. John L. Lewis, chairman for the CIO.

Q. Directly?

A. Right.

Q. To come to Jersey City?

A. Right. The fact is that I made the request, not to come to Jersey City or New Jersey, but because my home is northeast Pennsylvania and if they want my activities as an organizer I wanted to get an appointment close to my home.

Q. You just said your home was in Detroit, didn't you?

A. No, I didn't, I said my home was 15 Searl Street, Pittston, Pa.

Q. All right. What instructions did you get when you were sent to New Jersey.

MR. FRAZER: I object to that.

THE COURT: I will allow him to answer.

A. I will answer that. We were told——

Q. Not "we," what were your instructions?

A. Well, of course, I wasn't there alone. You want to know what took place down there, don't you?

Q. Yes.

A. Well, naturally I was one of thirty-two organizers who were assigned.

Q. What were your instructions?

A. To come over here in the State of New Jersey and try to organize the unorganized in this area because this is a great industrial area and there are so many thousands and thousands of workers unorganized.

Q. Was there anything said about Jersey City?

A. No, sir.

Q. And you came and reported to Mr. Carney, is that true?

A. I came here before Mr. Carney came.

Q. Before Mr. Carney came?

A. Yes, two or three days before.

Q. So that your testimony summed up consists of this, that on a certain day——

MR. FRAZER: I hardly think that that is proper.

MR. GLAVIN: Is there an objection?

MR. FRAZER: Oh, decidedly an objection to any such question as that, summation by counsel.

MR. GLAVIN: Well, I was just following your example. You have been doing it all day. All right, I won't use the words "summed up."

Q. So that you came to Jersey City and after you were here some time in October, 1937, in an automobile bearing Pennsylvania license plates, you drove from Academy Street down to Bay Street and on your way an automobile pulled up alongside of you with a sergeant of police in uniform and two men in civilian clothes and ordered the driver to pull to the curb?

A. Right.

Q. And when he pulled to the curb the sergeant got out, opened the door and asked you where you were from?

A. Right.

Q. And what you were doing in Jersey City?

A. That's right.

Q. And after examining or searching the car you were permitted to go on about your business?

A. That's right.

Q. Unmolested?

A. With the parting warning—pardon me.

Q. Now, just a minute.

MR. FRAZER: He has a right to limit——

MR. GLAVIN: He has a right to answer my questions without your telling him——

MR. FRAZER: I object, if he says this was a statement he has a right to qualify it if it was qualified.

Q. You were permitted to go on your way unmolested?

A. With the parting warning——

MR. GLAVIN: Just a minute, I ask the Court to direct this witness to answer the question yes or no.

THE COURT: I will adjourn until two o'clock.

(Recess.)

AFTERNOON SESSION.

THOMAS COMETA, resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. GLAVIN:

THE COURT: All right, Mr. Glavin, any further questions?

MR. GLAVIN: Yes. Will you read the last question, please?

THE REPORTER: There was an objection in the middle of the question.

"Q. You were permitted to go on your way unmolested?

"A. With the parting warning——

"MR. GLAVIN: I ask the Court to direct this witness to answer the question yes or no.

"Q. You were permitted to go on your way unmolested?"

THE COURT: I think he so testified, Mr. Glavin. That is my recollection.

MR. GLAVIN: Well, he may have testified to that, but I think that question is proper cross-examination.

THE COURT: Well, go ahead and answer it again the same way.

MR. FRAZER: He stated, as your Honor remembers, on direct examination——

THE COURT: He went up to this Standard—what is the name of it—Standard Cap and Seal.

MR. FRAZER: Yes. As he left he was threatened by the police officer if he did anything to look out, and so on, and it was that qualification I think the witness

had a desire to put in when Mr. Glavin interrupted him.

MR. GLAVIN: You mean you interrupted Mr. Glavin.

THE COURT: Well, it doesn't matter who interrupted who.

MR. GLAVIN: I think that is a proper question.

THE COURT: Go ahead. Answer the question.

MR. GLAVIN: And calls for a yes or no answer.

THE COURT: All right, all right.

A. With the parting warning from the sergeant——

MR. GLAVIN: Well, now, I move that that be stricken out and the question answered.

THE COURT: I don't think there is much use in yes or no answers, Mr. Glavin.

MR. GLAVIN: Well, it is the persistence of this witness to get one certain fact into the record, because of his counsel's insistence that it go in the record.

THE COURT: He says it is the truth. Now I don't pass on whether it is or not.

MR. GLAVIN: Well, I think I am entitled to have the question answered yes or no. It is a direct question.

Q. You were permitted to proceed on your way unmolested, is that right?

A. With the parting warning from the sergeant that if we were caught soliciting only God help you.

MR. GLAVIN: I ask the Court if you will direct this witness to answer that question without inserting what he thinks ought to be in here.

THE COURT: Of course, the trouble with that is what does the word "molest" mean, physically molest?

MR. GLAVIN: Physically molest.

A. We wasn't physically molested, no, sir.

Q. And you were permitted to go on your way?

A. We were permitted to go.

Q. And the only other occasion that you had to come in contact with the authorities of Jersey City was when you opened your headquarters on Academy Street you noticed an automobile parked at the corner of Academy Street and Summit Avenue, which you claimed was there consistently for a number of days; is that right?

A. Yes, sir.

Q. And that car contained two men in civilian clothes?

A. Sometime one.

Q. What's that?

A. Sometime one.

Q. Sometimes one. Did either of these men ever approach you?

A. Not, me, no, sir.

Q. That is all.

MR. FRAZER: That's all, Mr. Cometa. Thank you. Now, the name of the manager of the Peoples Center was asked for and I promised to get it if I could. It is Michael Zlepko. I am going to ask Mr. Morris Ernst to examine the next witness.

MR. ERNST: I would like Mr. Glavin to take the stand.

JOSEPH C. GLAVIN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Will you state your name and address, Mr. Glavin.

A. Joseph C. Glavin, 39 Bentley Avenue, Jersey City.

Q. And your present position?

A. Judge of the First Criminal Court of Jersey City.

Q. And of counsel in this present proceeding?

A. Yes, sir.

Q. You were an assistant corporation counsel, were you, for a time?

A. I was.

Q. For how many years?

A. I was connected with the corporation counsel's office for a period of seven years; I was assistant corporation counsel for a period of about three years.

Q. Were you an assistant corporation counsel at the time of your resignation to become a judge?

A. I was.

Q. And at what date was that?

A. Approximately February first. I don't recall exactly.

Q. Some time during this current calendar year?

A. That is right.

Q. It was certainly after November 30, 1937?

A. Yes.

MR. HAMILL: After November 30th, did you say?

MR. ERNST: November 30, 1937.

Q. Do you recall that you were a witness in a proceeding in the Federal Court in March 1937, a proceeding entitled American Civil Liberties Union, et al. v. Daniel Casey and Harry Walsh?

A. I don't recall the date, but I was called by Arthur Garfield Hays in that case as a witness, yes.

Q. Do you recall having testified in that case that you had advised the police department or the Commissioner of Public Safety of Jersey City in connection with strikes?

THE COURT: Would you like to see your testimony, Judge Glavin? I have it right here.

THE WITNESS: I don't care to see it, if your Honor please.

A. I don't recall exactly what I testified to. I answered the questions that were asked of me.

Q. I ask you, do you now recall whether, while you were an assistant corporation counsel, you advised the Commissioner of Public Safety of Jersey City or the police department in connection with strikes?

A. Was I asked that question?

Q. No, I am now asking you whether you now recall whether, when you were assistant corporation counsel, you did advise in regard to strikes?

A. I did at times, yes.

Q. You did at times. Do you recall what your position was in that capacity in respect to the rights of deportation and eviction?

A. I had no position officially. I was advising as a member of the bar of this state, and as assistant corporation counsel of Jersey City. What my position was had nothing to do with the situation.

Q. What was the advice——

MR. HAMILL: Now—after you complete your question, I want to make an objection.

MR. ERNST: To the question I am going to give?

MR. HAMILL: After you ask the question.

MR. ERNST: To this question?

MR. HAMILL: Yes, yes.

MR. ERNST: I might change my question.

MR. HAMILL: Oh, all right, if you do that, I want to hear that.

Right here I may just as well object on what you have given, because it will be of the same general tenor and effect.

He is asking this man to divulge confidential communications between an attorney and client, and he cannot do that without the consent of the client.

A. I have no intention to, Mr. Hamill.

MR. HAMILL: He is asking him, what advice did you give your client. That is a confidential communi-

cation between attorney and client. I wouldn't answer it.

Q. Mr. Glavin, have you previously testified in a court proceeding as to whether or not the police in Jersey City had the right to deport people—not the advice, but have you testified on that subject?

A. I don't recall that that question was ever asked of me.

Q. Mr. Glavin, I want to show you a transcript of the printed record in the United States Circuit Court of Appeals, October Term, 1937, case 6401, with particular reference to testimony stated to be that of one Joseph Glavin, commencing on page 428, and I ask you to look at that testimony to refresh your recollection, whether you are not the Joseph Glavin who so testified in that case?

A. I am the Joseph Glavin that so testified in that case.

Q. Now, will you kindly look over that testimony to refresh your recollection in regard to whether or not you gave advice in regard to deportation and eviction, just look over whether you did.

A. Well, now, just a minute. I will look it over when I get ready, or if I have an objection, being counsel in this case, I have a right to make it whether I am on the witness stand or not.

MR. ERNST: No question about it.

THE WITNESS: And I don't intend to have you tell me what I am going to do.

MR. GLAVIN: What is the purpose of this testimony or these questions?

MR. ERNST: Your Honor please, I am not called upon at the moment to state the purpose of the testimony.

MR. HAMILL: Well, we will object on the ground it is irrelevant.

MR. ERNST: If you will not interrupt me I will be happy to state it. The situation at the moment is that this trial opened up with a statement by the counsel for Jersey City, read into the record stating: "We have not interfered and will not interfere with the free access by the plaintiffs or by any persons acting in sympathy or in concert with them, to or upon and through the public streets, highways and thoroughfares of Jersey City." I now wish to interrogate this witness, who is a law officer of this community, along the following lines, and I don't want to be accused of testifying for him but you have asked me the purpose.

As I read his testimony, he made it clear that the city claimed, through its law officers, in March, 1937, to have the right to deport citizens.

THE WITNESS: I never made any such statement.

MR. ERNST: I am telling you my purpose. We will quote your testimony one way or the other. Now, I want to know whether that position, as I read it in the prior case, was reversed by Mr. Glavin or reversed by his successors. If not reversed, why didn't they stop the deportations? I want to prove that they had knowledge of alleged deportations and I want to know now what the position of Jersey City is in regard to evicting people and I will tell you my purpose in asking it. The purpose is perfectly simple. If the State of New York should adopt a similar thesis of law on the right to evict you would have a mass of our population living without a city and traveling on ferry boats back and forth and I want to reduce the proposition of a city's right to eviction and deportation, whether the evidence to date is sufficient in the Judge's mind is unimportant,—we have more of it,—I want to reduce it to an absurdity, in what you might call a nation instead of a city.

MR. HAMILL: May I state something there? In other words, he is calling this witness to act as his ex-

pert witness to determine and de-limit the right of a city to exercise what he calls the power of deportation. This man is called as a legal expert; he is not called as a fact witness but as a legal expert to give his opinion. Called in that capacity, he does not have to testify unless he wants to. He is not obliged to give his opinion. Have I made my point clear?

MR. ERNST: Yes, very clear, Mr. Hamill. If Mr. Hamill's facts were correct his conclusion would be entirely correct. I didn't pick Mr. Glavin as an expert on the law of deportation, although I might very well have done so. I picked him because he was a law officer of this city, is counsel in this proceeding. One of the reliefs asked in the bill is that this community of Jersey City stop deporting human beings resident in America. Now, I didn't pick him as a member of the bar, as an expert on the theory of law, nor will I ask him any detailed questions as to what cases he relies on. I will only ask him as an expert, if you wish it, one question.

In the previous trial he was asked had he ever found any cases to justify the theory of eviction. He said no, and I want to find out whether since last March, 1937, he has looked up the law and ever found such a case.

THE WITNESS: Just a minute, let me make a statement, Mr. Hamill. I want to make a statement in answer to your previous statement. My testimony, together with the testimony of a great many other witnesses produced on behalf of the defendants in this case, American Civil Liberties Union, a corporation, &c., v. Daniel Casey, apparently was believed by the Circuit Court of Appeals in Philadelphia because they granted a supersedeas, which is still in effect, staying the injunction of this court in that case.

THE COURT: Did they ever decide the case, Mr. Glavin?

MR. GLAVIN: The case should be decided shortly. I argued it about a month or six weeks ago at Philadelphia.

THE COURT: A year after the stay, as I remember it.

MR. ERNST: Your Honor please, it seems to me entirely unimportant whether the final judgment of the Court in that case is to be reversed, I am not at all concerned with it at this time. I am merely concerned with a law officer of this community having testified, as I read that record, that the community had the right to deport, that a cop could decide who should be deported. Now, then, I want to know whether he so said in March, 1937, and whether he changed his position while a law officer of this community.

MR. HAMILL: Since he is not a defendant what difference does it make?

THE WITNESS: If you will read the testimony, Mr. Ernst, you will find I did not testify to any such thing.

MR. ERNST: Your Honor please, I want to read the testimony. I accept the suggestion of reading it.

MR. HAMILL: Your Honor please, now before——

MR. ERNST: It is the suggestion of the witness that I read it.

THE WITNESS: Read it to yourself.

MR. HAMILL: I want to address a——

THE WITNESS: Don't make a speech about it.

MR. HAMILL: I want to address a motion to the Court. As assistant corporation counsel or as corporation counsel, we have advisory powers. Now, it is not anything to Mr. Ernst,—it is nothing to Mr. Ernst or to anybody else what advice we give to the officers of the government.

The officers of the government are responsible for their acts, and if our advice is right, then their action is right. If our advice is wrong, their action is wrong. But they could not justify themselves by saying, "We did it under the advice of counsel." They might excuse themselves, but they could not legally justify themselves. So what purpose has this testimony to find out, "did you hold one opinion at one time and now have you changed your opinion?"

MR. ERNST: I want to find out, if your Honor please, the position of the legal advisers of the City of Jersey City to the police.

THE COURT: At present, you mean?

MR. ERNST: And then I want to proceed to find out through the mouths of the police, and mind you, these are not the most friendly witnesses, but I am trusting that they will bring out our case, I want to find out whether the police followed the advice. For example, let us assume that Mr. Glavin now testifies that after March he changed his opinion and instructed the police that there shall be no more deportations.

THE WITNESS: Which I didn't do.

MR. ERNST: If in our—what was that?

THE WITNESS: Which I did not do.

MR. ERNST: Now, let us assume, however, that his successor had modified the opinion and had revoked the position that deportations are lawful. Then I would like to prove, and I will prove that the police, despite the position of the counsel to the police, continued deportations.

That is clearly within the proof permitted under our bill.

MR. HAMILL: The bill——

THE COURT: I think you should——

MR. HAMILL: Have you finished?"

THE COURT: Mr. Ernst, I think you should ask Mr. Hamill as the head of the office.

MR. HAMILL: Yes, ask me.

THE COURT: What is the present position of the city government of Jersey City with respect to what have been called deportations.

MR. HAMILL: And we object on the ground that that is absolutely irrelevant because, if your Honor will write me or Mr. Ernst a letter such as we get from the different departments, write me a letter, as your Honor knows, setting forth the facts, then I will be able to give an opinion.

THE COURT: Well, you are charged in the bill with——

MR. HAMILL: And those are our duties.

THE COURT: —forcibly removing people from the city limits. Do you justify that removal or not?

MR. HAMILL: You can forcibly remove anybody, depending upon the circumstances. Suppose somebody is going to kill him? Wouldn't it be an act of mercy toward him to take him away, out of the zone of danger?

MR. ERNST: If your Honor please, it seems that Mr. Hamill has opened the door to a discussion of the theories under which they justify deportation. I insist that I have a right to get from Mr. Glavin, because of the first question I asked him, "Have you"——

MR. HAMILL: We object. I merely want to say this, if you don't mind.

MR. ERNST: I would rather not have you interrupt me, Congressman.

MR. HAMILL: All right.

MR. ERNST: I have the right to proceed with Mr. Glavin and then pick up Mr. Hamill as a witness later, for this reason: that in the previous cases Mr. Glavin testified, and Mr. Casey so confirmed, that Mr. Glavin advised the police officials, and I want to get a continuous stream of advice for the past year, without a hiatus. Mr. Glavin was assistant corporation counsel during the November, December and January periods. I want to examine him in regard to the advice which he said in his previous case he gave in regard to picketing, the right to interrupt, as we view it, organizational activities, and then I want to see whether he changed his position after March, and I want to see if it is a sustained plan of the enforcement officials of the community to interrupt picketing, to stop circulars, to deport people, to continue searches and seizures, and on all these points Mr. Glavin and Mr. Casey have previously testified, and I am shocked at a public official relying on a question of privilege before his client even claims the privilege.

THE WITNESS: That's——

MR. ERNST: And I now ask, does the client claim this privilege?

MR. HAMILL: I wish to speak before the client. Of course, I would not for the world stop Mr. Ernst. I know how keenly sensitive he is and how delicate he is, and I know he must feel prostrated over the fact, but in spite of the ailment my objection produces on him, physically and mentally, I must present it.

The bill charges that certain acts were done by the police. It isn't any concern of anybody by whose advice. What this court is determining is, is the act of itself a lawful act. That can only depend according to the circumstances. After we get the circumstances out,

then if counsel thinks it needs some correct advice on the law, why we will be glad to give it.

THE COURT: I suppose that it would be relevant, Mr.——

MR. HAMILL: But they are calling us to know, "Did you advise them to do this?"

My answer is, "It is none of your business what we advised."

THE COURT: I suppose it would be relevant on the issue——

MR. HAMILL: And it is irrelevant.

THE COURT: Wait a minute, Mr. Hamill. If you will sort of face me——

MR. HAMILL: Remember, I haven't the slightest objection, neither has Mr. Glavin, to going on the stand and answering everything. If he wants to carry this thing far afield, we will carry this thing all over the lots, record or no record. I am attempting to try this case in a legal and orderly manner, but if the gentleman wants what his friend calls a picture or a scene, or a ballyhoo, he will get it, in over-abundant measure; and in order to tie up that statement, that is what his question reveals.

THE COURT: I suppose whether the policy of Jersey City's legal department is to advise the continuance of the acts complained of——

MR. HAMILL: And suppose it did?

THE COURT: —that would be relevant——

MR. HAMILL: I say it would not be relevant because if it were wrong, it would not justify an official. It might excuse him. It would not justify an official. And if it were right, it would add nothing to his credit.

THE COURT: It would certainly have some bearing on the possibility of his continuing the acts.

MR. ERNST: If your Honor please, I think we can rest also on another legal foundation. The injunctive prayer for relief endeavors to restrain all of the agents and servants acting in connecting with the plan, and my first question therefore to this witness was in relation to his official capacity that I may call a servant of the people of Jersey City, and I think we are clearly within the evidence there.

THE COURT: I think the examination of the legal department ought to be at the end, though, Mr. Ernst.

MR. HAMILL: Let us know what it is. When we answer a question, we answer it on a state of facts, and if Mr. Ernst will tell us the state of facts, which we have forgotten, on which we gave that opinion, why then we will be able to give you an opinion and tell you why we did it.

THE COURT: I think we are wasting time——

MR. HAMILL: For instance, there isn't anything unreasonable in that, for instance, a public officer might come to me and ask my opinion on a state of facts—say a month ago—and someone present another state of facts and say, "Now, you gave him that opinion," and I would say, "Well, now, wait a minute. Let us see if there is any letter or something; call the public officer and see what were the facts on which I rendered that."

THE COURT: If, Mr. Hamill, the evidence showed a series of purported deportations, as they have been described, and then the legal department in Jersey City were to testify that, "We are going to advise their continuance," that certainly would be some evidence on which a Court must consider an injunction.

MR. HAMILL: If the Court, for instance, were to issue a decree; but until the Court issues a decree, un-

fortunately we haven't the guidance, I say it with great respect, as you know, we haven't the guidance of any court; we haven't the guidance of any court. When a decision is laid down, we advise following it. Take, for instance, the ordinance declared unconstitutional in the Griffin case. Up to that point we said, "Stand by our own ordinance." When the Supreme Court spoke we said, "No, our ordinance to that extent has been ruled out. Follow the law."

Now, if your Honor, for instance, were to render us a decision, why, of course, we would say the United States court has spoken, we must follow that decision.

THE COURT: I think we will postpone examination of the legal department until after the fact witnesses, Mr. Ernst.

MR. ERNST: Your Honor please, the advantage of doing it this way is that the examination of this witness and Mr. Hamill must have no relation to any particular state of facts. It seemed to me much more orderly to get this on the record.

As I understand the city's position in March, 1937, they said—and on this I would like to examine the witness—that they had a right to deport, and I want to know whether they say they have a right to deport, even if no unlawful acts have been committed.

MR. HAMILL: Well, we will answer that by saying that you cannot deport if no unlawful acts are committed. That's the easiest thing on earth to answer. I will let you answer it for us.

MR. ERNST: Now, I want that answer in the form of testimony from Mr. Glavin. Will you let him answer that?

MR. HAMILL: No, I won't. It isn't proper for you to ask that question, but if you are seeking advice I am

in a very gracious and munificent mood today and I will be glad to give it to you.

MR. ERNST: I didn't ask your advice; I want to know whether a Judge of this district, a member of the bar, a former corporation counsel, is ready to look over some testimony that he gave a year ago to refresh his recollection so that I can ask him what he said then.

MR. HAMILL: Not until we know whether this is a situation similar to that to which that advice would apply, and that can only be known after we get the testimony in.

MR. ERNST: After he has looked it over, I will ask him the question as to whether it is similar or not.

MR. HAMILL: Well, we don't know and neither do you.

MR. ERNST: I want him to look it over.

MR. HAMILL: Know whether the situation in this case is the same as that? You have the benefit of that record. Neither you nor I know what this case is going to be, at least we don't. We haven't prepared our witnesses, I don't know whether you did or not, and we don't know the case until it goes in.

MR. ERNST: Mr. Hamill, may I just clarify it, and I think you will agree with me—follow me a moment. The testimony of Mr. Glavin to which I make reference in no way relates to any state of facts particularly; it does not relate to that particular case that was in court. They were general questions on the policy of the law authorities of the community on instructions to the police on the right of deportation, picketing and other matters in issue in general terms here, so how could we be aided by specific facts at all?

MR. HAMILL: Then he has no right to inquire what takes place between the law department and public offi-

cials. There is no power on the part of anyone to find out what a law department as a general rule, without reference to this case, does. What advice do we give to public officials? You might as well ask a lawyer "What advice do you give to our client?" And he says, "You must excuse me, that is my own affair and the affair of my client."

THE COURT: I think you can plead privilege if you want to.

MR. ERNST: If your Honor please, will privilege lie, assuming that Mayor Hague and the city officials wish to plead privilege?

THE COURT: I haven't been able to make out whether it does or not.

MR. HAMILL: I don't know. This is the first time—Mr. Ernst, I am conducting this case in a perfectly legal manner, and I am suggesting these questions of law. If Mayor Hague and I understand you have called him as a witness, and when you get him on the stand I will assure you he will neither be dumb nor tongue-tied, so that you can get lots out of him after you get him on the stand——

THE COURT: We are not talking about that at this moment. We are talking about whether you want to plead privilege between you and your client.

MR. HAMILL: I don't know, but I would do what your Honor would do as a lawyer, if someone called you to the stand in the absence of your clients, you would say, "I will first ask my client."

MR. ERNST: Your Honor please, there is one of the clients parties defendant in the court and I suggest that we take a five-minute adjournment if necessary and have Mr. Hamill consult Mr. Casey and see if Mr. Casey wishes to plead privilege.

MR. HAMILL: Well, we don't have to take any adjournment because Mr. Casey, by my suggestion now, will plead privilege if he follows my suggestion.

MR. ERNST: I take it that the client pleads privilege.

MR. HAMILL: The client pleads privilege and the lawyer makes a motion for it to be stricken out on the ground of irrelevancy, incompetency and impertinence.

THE COURT: You had better add "scandalous."

MR. HAMILL: The last is the best ground.

MR. ERNST: Have you ruled on whether the plea of privilege can stand?

THE COURT: I would have to look that up. I don't know how far it goes, I never have known.

MR. ERNST: May I then suggest that I withdraw this witness and I will call Mr. Casey. It is understood I may recall Mr. Glavin?

THE WITNESS: Oh, I am deeply honored by it, Mr. Ernst.

MR. HAMILL: And call me, it will be a pleasure, Mr. Ernst, to have a colloquy with you.

(Witness withdrawn.)

DANIEL CASEY, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. What is your address?

A. 179 Fairview Avenue.

Q. What position do you hold?

A. Director of Public Safety of Jersey City.

Q. How long have you held that position?

A. Since May 5, 1937.

Q. And by whom are you appointed to that position?

A. I was appointed on May the 4th, sworn in on May the 5th, by the City Commission, at the death of Director Wolff. On May the 10th I was elected to the City Commission and I was sworn in to the office of Director of Public Safety, I think it was May the 18th, 17th or 18th, I am not certain, 1937.

Q. Before you held that position what position did you hold?

A. I was Chief of Police.

Q. And for how long?

A. About two years—well, no, for about a year, not quite a year. While Director Wolff was sick I was Acting Director for about a year.

Q. You were served with a subpœna ordering you to bring some records into court today?

A. Yes, sir.

Q. Have you the records with you?

A. I have not in here; they are out in the hall with my chauffeur.

Q. Will you kindly have them brought in, please?

(Documents produced.)

Q. Do these documents, Mr. Casey, include all of the items called for in the subpœna, to wit, all records concerning outdoor meeting applications made to the Director of Public Safety of Jersey City during the past three years?

A. Well, I would have to bring the memorandum books from headquarters. If you want that I can do it.

Q. We certainly want them. Does it include the original applications for such meetings?

A. Yes. I think what it calls for in that order I brought.

Q. No, I want you to look through what you brought and tell me whether you have brought what the order of the Court calls for, the original applications for such meetings.

A. I think it calls for two applications of Mr. Rothbard and applications by Spaulding Frazer.

Q. All right. Now, let's cover those. First I just want to make sure we have everything. I take it that these documents here are the ones called for in the subpœna, reading "Original letters addressed to you from Samuel L. Rothbard dated December 17, 1937, December 20, 1937 and December 28, 1937, and the originals of letters from Spaulding Frazer dated December 23, 1937 and January 23, 1938."

MR. HERSHENSTEIN: January 3d.

MR. ERNST: January 23d.

THE WITNESS: That is January 3d. I didn't get any on the 23d.

Q. Third, I am probably in error.

MR. HERSHENSTEIN: Those are here.

Q. So much we have. Now, will you look through the balance and let me know whether you have all the records concerning outdoor meeting applications made during the last three years aside from the items you said are not there which you described, I think, as a memorandum book of some kind.

A. Yes. That is '35, '36 and '37, is that right?

Q. Those are all the records outside of the memorandum book?

A. Outside of the memorandum book, the applications.

Q. We might save some time if you would care to tell me what its contained in the memorandum book.

A. Where the meeting is going to be held and who the permit was issued to.

Q. But aside from that information everything that is in your files in relation to applications for meetings is right there, every document?

A. So far as I know. What I did do I checked back for twenty-five years on applications that were issued. I have a record of every application that we have that was issued

for twenty-five years from the time that Mayor Hague was elected to the City Commission and became Director of Public Safety.

Q. And the original applications for every meeting?

A. Not the original applications.

Q. Let me make it clear so that you and I don't misunderstand each other. The subpœna of the Court asks for the original applications for such meetings for three years.

A. I didn't have them; I got a list of the permits that were granted.

THE COURT: Did you have the refusals, too, Commissioner?

THE WITNESS: Well, we never had any trouble, your Honor, till last December. We never stopped anybody from holding meetings, always issued permits.

THE COURT: You mean they all were granted?

THE WITNESS: Yes, till I think it was December, 1936. I will explain that to the Court later if you want me to and why we stopped.

THE COURT: I imagine we will get to that.

THE WITNESS: No doubt about it.

THE COURT: Well, why can't your secretary furnish counsel with a list—will this be satisfactory—of the applicants and the date that they were permitted to speak?

THE WITNESS: I have got it right here, your Honor.

MR. ERNST: No, your Honor.

MR. HERSHENSTEIN: We have a complete list here.

MR. ERNST: The Judge asked me a question. I say frankly—and I don't want to divulge the reason at the moment——

THE COURT: No, I didn't ask it.

MR. ERNST: It will not be at all satisfactory.

THE COURT: There is a list. This is the list of three years, is it, counsel?

THE WITNESS: No, I think that goes all the way back, your Honor; if it doesn't, I have the list here. I am wrong, your Honor.

THE COURT: '32.

THE WITNESS: Here it is right here. Excuse me.

THE COURT: Yes. For instance, here it goes back as far as—well, the first is 1913. I guess that's a mistake.

THE WITNESS: 1913 is right, your Honor.

THE COURT: The first is the Democratic Party, permission to hold street meetings; second one, Socialist Party, permission to hold street meetings; third, the Fielder Democrats, &c., the Wittpenn League—would a perusal of that——

MR. HERSHENSTEIN: Will you refer to the documents the Court just looked at as a list of items, permission to hold street meetings?

THE COURT: This is a supplemental one, Commissioner?

THE WITNESS: Yes, sir; I had that for three years.

MR. ERNST: Your Honor please, these lists merely indicate action taken.

THE COURT: What is desired in addition to that?

MR. ERNST: What is desired in addition to that is this: here is an ordinance, whether constitutional or not, under which this official presumes to act, and we must proceed to examine him in respect to the use or abuse of his discretion, the basis of the standards that

he created, the question of discrimination as between parties, the kinds of investigations he made and another wide field of inquiry, which I do not care to divulge at the moment, but which is pertinent to this situation.

THE COURT: What other document would be necessary for that purpose?

MR. ERNST: I would like to see the original applications, I would like to know whether they were in writing; I would like to know whether they call for information which he has asked in certain respects in cases of certain applications, he asks for the subject matter, in others the speakers; in others he says, "I don't like the subject matter, I disagree with it. You are wrong on the subject matter." We are going to prove his complete discrimination in certain instances and we are relying on the truthfulness of this witness to the extent that if he brings us a full file we will find that he has never, never conducted an inquiry in the direction or in the mood in certain cases as he has in others and his right to ask certain questions we intend to explore. We can only do that by comparison of the applications.

MR. HAMILL: Has counsel the right to search the operations of a man's mind to know why he came to a conclusion?

THE COURT: Commissioner—will you listen to these questions, Mr. Ernst, if you would—in those applications, the list of which you have given, beginning in 1913, do you know whether there are any other documents accompanying them?

THE WITNESS: There is nothing there only the record in the memorandum book.

THE COURT: What is that, is that any different from the list?

THE WITNESS: Yes, because the memorandum book, when the order was issued from the chief of police office to the different precincts where the meetings were to be held, there was a memorandum made to notify the man on post that there was a meeting on that corner or wherever it was on that evening.

THE COURT: Well, was there any other document in your file?

THE WITNESS: Well, that I couldn't tell you about, your Honor. I wasn't chief of police at that time.

THE COURT: Is there since you became chief?

THE WITNESS: There have been letters in there, and there have been——

MR. ERNST: If your Honor please——

THE COURT: We are only dealing with the subpœna duces tecum now.

MR. ERNST: Yes.

THE COURT: I am trying to find out if he has any other document.

THE WITNESS: No, I brought everything practically that I have, your Honor.

MR. ERNST: Now, if your Honor please, the records before us do not even show the instances of renewal of permits.

THE COURT: I thought he said there were none.

MR. ERNST: Oh, no. Mr. Casey said there weren't up to maybe a year or two ago.

THE COURT: Oh, yes.

MR. ERNST: But recent refusals are not even shown in these documents.

THE COURT: Aren't they, Commissioner?

THE WITNESS: They weren't asked for. I brought —to the best of my recollection I brought what I was asked for.

MR. ERNST: "All records concerning outdoor meeting applications made to the Director of Public Safety of Jersey City during the past three years."

We couldn't have said it clearer.

That is in regard to applications.

THE COURT: Where is that three-year list?

MR. HERSHENSTEIN: Mr. Frazer has it.

MR. ERNST: Have you got the three-year list?

MR. FRAZER: The three-year list is right here.

MR. ERNST: What is this (indicating)?

MR. FRAZER: This is prior; prior.

THE COURT: Does this show the refusals, Commissioner, this three-year list?

MR. HESHENSTEIN: Speak up.

THE WITNESS: Your Honor, we weren't refusing any body. We were having no trouble. Everybody was allowed to talk.

THE COURT: Well, the last date here seems to be the thirteenth, of the fifth month; the thirteenth of what is that? April, isn't it? Fifth month—no, May; the thirteenth of the fifth month, 1938. That is the fifth of this last month?

THE WITNESS: Some religious organization, if I remember rightly, your Honor——

THE COURT: Yes; Reverend C. E. Kirkwood. Are there any refusals there?

THE WITNESS: No refusals there. We haven't put any refusals on there, your Honor.

THE COURT: Oh.

THE WITNESS: Because the refusals are right in my office.

THE COURT: The refusals are not in this file then?

THE WITNESS: They are all the ones that I understood he wanted and I——

MR. ERNST: Specifically we asked for the originals of the correspondence.

THE COURT: And the refusals?

MR. ERNST: And the refusals; except in one case, where there was never a refusal.

THE WITNESS: I don't know about——

MR. ERNST: And one of the applications has been held; we have never been advised whether the application was granted or not.

MR. HAMILL: He said, Mr. Ernst, if it is in any way helpful, that up to December, 1937——

THE WITNESS: Anything that I can help out on I will be glad to do so.

THE COURT: I think if you will tell him what you want he will get it for you.

THE WITNESS: If you will let me know just what the application is you want, and if it is there, I will send right for it.

MR. ERNST: No, no; I want from you, and I think we have a clear right to it, I want from you all records concerning outdoor meeting applications. I take it that these are all the records you have, where you have granted permits. Now I want in addition all records

for all applications where you have either denied permits or are still holding them up undecided.

MR. HAMILL: Now, may I get that——

MR. HERSHENSTEIN: I think we can do that.

MR. HAMILL: You don't want all of the records. You want all of the records of cases where there were denials.

MR. ERNST: I am coming to the balance later. I certainly want all of the records of denials.

MR. HAMILL: All right.

MR. ERNST: And pending applications.

MR. HERSHENSTEIN: We can get those.

MR. HAMILL: We can get those. Pending applications?

MR. ERNST: Yes, because some of them you never deny and they just go dead on you. I have got one here which I can show you.

MR. HERSHENSTEIN: We can produce those.

THE COURT: Mark those in evidence that you have got here, Mr. Ernst. I think it would be better if you marked them.

MR. ERNST: If your Honor please, I would like to have these marked for identification.

THE COURT: All right. Mark them some way so they are on our records.

MR. ERNST: Yes.

I would like to have them marked for identification.

MR. HERSHENSTEIN: Do you want to mark them in one batch or separately?

MR. ERNST: No, separately. Certain documents produced by the witness pursuant to subpœna duces tecum, the documents being identified as follows:

Jersey City Police Department, itemized list of permits issued to hold street meetings, et cetera, to political parties, 1913 to 1938.

MR. HAMILL: Now, I don't understand that——

THE WITNESS: I think there is a mistake on that cover there.

MR. ERNST: Let me just mark these first, then we will get——

THE WITNESS: There is a mistake on that cover there, I guess. It means all permits issued in that time.

(Marked Exhibit P-10 for identification.)

MR. HAMILL: You don't want all of the papers that accompanied every application for the past twenty-five years, do you?

MR. ERNST: Let's get to what I want, when we mark these for identification.

MR. HERSHENSTEIN: What number is that?

THE CLERK: P-10.

MR. ERNST: Another instrument for identification entitled "permits granted for street meetings, religious," consisting of two pages, legal cap.

(Marked P-11 for identification.)

MR. ERNST: Next, I think we can simplify this by giving one identification number, correspondence from Samuel L. Rothbard to Director Casey, originals of letters dated December 17, 1937, December 20, 1937, an undated letter marked "Received December 22, 1937,"

together with copies of letters addressed by Daniel Casey to Mr. Rothbard dated December 20, 1937, December 22, 1937, December 20, 1937, and December 22, 1937, together with a post office registered mail receipt date December 20, 1937. I think we can put those in one batch, all P-12.

MR. HERSHENSTEIN: They will be marked as one exhibit, P-12.

(Marked Exhibit P-12.)

MR. ERNST: P-13 would be orginal of letter addressed by Spaulding Frazer to Daniel J. Casey, dated December 23, 1937; a further letter addressed by the same party to Daniel J. Casey, dated January 3, 1938, together with copies of letters addressed by Mr. Casey to Mr. Frazer, dated December 27, 1937, December 30, 1937.

(Marked P-13 for identification.)

MR. ERNST: Now, if your Honor please, in respouse to Mr. Hamill's suggestion, I want to make clear again seriatim the additional information that we require and documents that should be produced and which we believe were called for under the subpœna.

1. All records concerning applications for outdoor meetings made during the past three years, whether the applications were granted, pending, or denied, and whether the records consist of records subsequently established in the office of Mr. Casey, or whether they consist of original letters, resolutions, documents, or other instruments.

MR. HAMILL: Now, do I understand you to mean, Mr. Ernst, that he is to transfer from his files to this court room everything for the past three years, in the way of applications, documents, records and papers pertaining to applications for permits?

MR. ERNST: Exactly, sir.

MR. HAMILL: Those are official records and on account of the inconvenience of them, we object to the demand for them, and say that if plaintiffs want a certified copy, we will be glad to give them, on the payment of the proper fees, or, in order that the public business may not suffer by the transfer of public records, he must tell us what paper he wants.

I cannot say to the Register of Essex County or Hudson County, "bring me all the records of deeds, mortgages, assignments of mortgages, and pile them up in this court."

The Court would say "which one do you want, and I will make him get it."

MR. ERNST: Your Honor——

MR. HAMILL: I will finish in a minute, Mr. Ernst.

He cannot simply say, "clean out your office with everything in it and put it in the court room until I go over it on a fishing expedition to find out which one I want.". The Court will say, "what one do you want?" and then say to the witness, "Go and get it." But to say, "within a certain time I want all of your records," we say, "why?"

"Because I have something up my sleeve I won't tell you."

We say, "Well, it must come down out of your sleeve and you must tell us just what particular one you want," and not ask us to transfer the whole office over. That would be unreasonable.

THE COURT: Well, will you permit——

MR. HAMILL: As examination of them? Oh, yes, yes.

MR. ERNST: Oh. Now let's get this clear on the record.

MR. HAMILL: Yes, I will permit—Mr. Ernst can come over and go through them all.

MR. ERNST: No, I take it that Mr. Frazer any myself can send someone over to look over such files?

MR. HAMILL: I don't see any objection to that.

MR. ERNST: And on what kind of notice? So we are not held up.

MR. HAMILL: Oh, on a telephone notice.

MR. ERNST: Telephone notice.

MR. HAMILL: That is all right. There will be no trouble about that. When do you want it? By next Monday?

MR. ERNST: Well, no. I will let you know before we adjourn court, just when we will come over.

MR. HAMILL: All right.

By MR. ERNST:

Q. Mr Casey, will you describe to me just what those records are that are kept that we will find, in a general way?

A. Well, I think all applications from the time that I have been Director of Public Safety you will find there.

Q. I am not talking about from that time. I am saying during three years we will find all the applications——

MR. HAMILL: Mr. Ernst, before we leave that, and only for this purpose, maybe you ought to put in writing what you want and call on us to admit it. Maybe that would serve your purpose.

MR. ERNST: No.

MR. HAMILL: Or would you rather investigate?

MR. ERNST: We are going to look them over.

MR. HAMILL: All right.

Q. Would all the applications be in writing?

A. No, they wouldn't, because they might be filed at police headquarters.

Q. No, I am not——

A. Just a minute.

Q. I think you misunderstood me.

A. I will explain them to you.

Q. Just a moment. You misunderstood me.

A. All right.

Q. Your answer was not responsive. I am not asking where they are filed. I am saying, are all applications always made in writing by the applicant?

A. They are not.

MR. HERSHENSTEIN: He says no.

Q. Now what is the rule in the administration of your office with respect to this particular ordinance, as to when the applications must be in writing and when they may be made out otherwise.

A. Just a moment, I will explain that to you.

Q. That is what I want.

A. From the time that I have been in that office——

THE COURT: Might I ask counsel what exhibit in the bill——

A. I——

THE COURT: Just a minute.

THE WITNESS: Excuse me.

THE COURT: What exhibit in the bill is that ordinance? I have the other one but I want to look at this one.

MR. FRAZER: Exhibit B, I think.

THE COURT: Exhibit what?

MR. FRAZER: Schedule B, I think it is. No. Just a minute. Here it is.

THE COURT: A; it is A. I have it. Regulating halls and other places for public——

MR. FRAZER: No, no.

MR. ERNST: E is the one at the moment we are discussing.

THE COURT: D?

MR. ERNST: E, Exhibit E.

THE COURT: All right, all right, I have it.

MR. HERSHENSTEIN: I think there was an unanswered question.

MR. ERNST: The Commissioner was going to explain when they were in writing——

MR. HERSHENSTEIN: Since he became Director of Public Safety.

A. Since I became Director of Public Safety, it has been mostly written applications that I have received, and there have been applications issued for religious meetings yearly, and they come in and get them. That is about all I can remember.

Q. And your recollection is that the only applications not in writing were the religious meeting applications?

A. I think so. I wouldn't be certain of it, your Honor —or Counsellor.

Q. Thank you. Do you look at every application yourself or is somebody in your office assigned to make a report to you on each application?

A. My secretary. They go to him.

Q. And what does he do with them? Does he make a report to you?

A. He tells me about it yes.

Q. And does he make an investigation as to the application?

A. We make an investigation, yes. If it is somebody that is applying for an application that we don't know.

Q. Now, if you know the party, you don't make any investigation?

A. It is according to who the parties are.

Q. Yes. So that some of the parties whom you know you would also investigate?

A. Yes.

Q. What?

A. Yes.

Q. Now in your investigation under this ordinance, do you ever get in touch with the applicants themselves, to ask questions and get information?

A. I have, yes.

Q. In what cases other than those involved in this particular litigation?

A. (No answer.)

Q. Just give me one instance, one example.

A. Well I have had people come in there. Off hand I couldn't say. That is just a matter of routine, and I don't pay much attention to it.

Q. What don't you pay much attention to?

A. To the different applications that come in.

Q. Do you pay attention to the applications that come in, to the names of the persons who are to speak?

A. Yes, I do. I look it over.

Q. That is important?

A. Yes, very much.

Q. Would you say that that is one of the determining factors in your mind, as to who the person is who is going to speak?

A. Well, I find out who the speakers are going to be there, often.

Q. Do you ever issue permits to organizations not knowing who the speakers are to be?

A. No, sir.

Q. In other words, you have never issued an application to an organization asking for leave for a street-corner permit for a meeting without knowing the names of the speakers?

A. To the best of my knowledge, no.

Q. What do you do in the cases of permits issued for a year or more, in respect to prospective speakers at the later meetings?

A. The persons that is going to talk at those meetings go in and notify the captain of that precinct that they are going to have a meeting on a corner that is allotted them, allotted to them, on such a night, day and date.

Q. And is there a printed form or any rule or regulation issued as to this procedure of going in——

A. He has a permit——

Q. Just a minute. Let me finish.

A. Go ahead.

Q. —to this regulation, which directs people to go to the captain of a precinct for the right to speak at a certain time?

A. Well, with a yearly permit, he goes in and shows the captain his permit.

Q. Under what ordinance do you issue yearly permits? Under what power?

A. It has been the custom, and I didn't change it. I couldn't tell you. I——

Q. Did you get advice of counsel ever on it?

A. No, sir, I did not.

Q. Do you know if any predecessor in office got advice of counsel on it?

A. I couldn't tell you. It had been the custom for years.

Q. And how long does that custom run back, to your knowledge?

A. Well that custom is practically as long as I have been in the police department.

Q. How long is that?

A. About 27 years.

Q. And that custom ran back then before the date of this ordinance, didn't it?

A. Certainly.

Q. Now we are only talking about your operation under an ordinance, and the ordinance is 1930. I take it that the ordinance, and I think you agree with me, purports to give you power to issue permits for street-corner meetings?

A. It does.

Q. And do you under that ordinance delegate to the captain of a police precinct the right to determine whether a particular person is to speak at a particular corner under a yearly permit?

A. A man that has that yearly permit, and the captain is notified about it, that man goes in there; he is the man that talks on that corner regularly once a week, and he has never been stopped.

Q. Is there only one such permit?

A. Oh no, there are several of them. I guess that list will show you plenty of them.

THE COURT: Take your list, Commissioner, and illustrate, will you, from that list? Here it is.

MR. FRAZER: The top one.

THE COURT: The top one.

MR. ERNST: One is political and one is religious.

THE COURT. I thought there was another one, wasn't there?

MR. ERNST: No, one is political and one is religious; no economic list.

A. It is marked right on here. (Indicating.)

Q. I want to get this clear; under the 60-day and 90-day and year permits, I take it that it isn't always the same man who is going to speak, is it?

A. Well, I never checked back on them, Counsellor.

Q. But I understood you to say before that the man who held the 90-day or year permit would walk into the precinct and tell the captain who would talk at the particular time allotted?

A. He would—well, if you understood me to say that, I—

Q. I don't know.

A. I think that isn't what I said, or what I meant.

Q. Now, tell me what happens, if I have——

A. But here is what it is: the man, he is a minister or a clergyman or something that has that permit with the church there, and when he wants to hold a meeting, he is well known to the captain of the precinct, he goes in and tells him he is going to have a religious meeting on such a corner on such and such a night.

Q. And the captain would have no authority to say, "you can't have so and so speak," that is just an automatic notice that he gives, is that it?

A. No. He didn't tell him who should speak or who shouldn't speak there.

Q. I want to get this clear, maybe I am not following you correctly.

Assume I get a permit for an order from you to speak at a certain corner and I get the permit not as an individual but let us say under the name of a church, as some of these permits here indicate; I am a church for the moment, and I have a permit for a year. Do I, the holder of the permit, that is, the church, go around to the station house each week and notify the captain as to who will exercise that permit?

A. That permit was issued to that man that applied for it to talk there.

Q. But if you follow me a moment, these permits are not all of them to individuals; these permits run to either incorporated or unincorporated organizations. I refer, for example, to a permit for one year, the Volunteers of America. Now, when that permit is issued to the Volunteers of America do your files show the names of the people who are going to speak under the auspices of the Volunteers of America?

A. It does no.

Q. It does not. In other words, the name of the person who is going to speak is not considered by you material in that situation before you grant the permit?

A. It is not.

Q. Is that right? So that you are in effect saying that the name of the speaker is not the determining factor, is that right?

A. Not in a religious meeting, no.

Q. Now, let us see some of the other meetings. Have you a record of meetings that are not political or religious?

A. You have every record that I have there, practically all the permits that were issued.

Q. I tell you why I ask you, Mr. Casey. This record was the record of religious permits; the one I hold in my hand, P-10 for identification exhibit, is entitled "Political Party Permits," and I want to know whether you ever issued any permits in the sphere of life we might call economics or general welfare, that is, neither religious nor political party. Do you ever issue any such permits?

A. I don't quite get that, Counselor.

Q. This exhibit here—let me put it this way—what you have produced—and I understand it is all-inclusive—is a record of all permits granted over a period of years. The one record is entitled "Permits for Religious Meetings," the other is entitled "Permits, &c. to Political Parties."

A. Would you mind letting me look at it?

Q. Certainly. My question, so you get it clearly, is: Were there no permits ever granted other than to political parties and religious groups?

A. There have been permits issued to the Socialist Party, as it states here.

Q. That is a political party; and what I am asking is were there any permits issued that are not to political parties or religious groups?

A. Offhand I cannot say.

Q. In other words, if there were such a permit granted it would show up in one of these two lists?

A. Most likely, yes.

Q. Well, I don't know what you mean by "most likely."

A. I have had a thorough check made of them through our record books, copies of them made and submitted here.

Q. Let us get this clear. I understood that these records were all-inclusive as to all permits granted of all kinds.

A. Yes, sir.

Q. Well, then, wouldn't they show up here?

A. They ought to.

Q. Now, where would, in this document, an application for a permit of the Catholic Workers Association appear?

A. I don't know, it ought to be there.

Q. Well, in which group would it be, political or religious?

A. I think it would be in religious.

Q. Might I suggest, Commissioner Casey, Mr. Hershenstein has pointed out that my confusion is perhaps due to the fact that the caption is incorrect.

MR. HERSHENSTEIN: The caption may be incorrect.

Q. And if Mr. Hershenstein would care to change his caption——

THE WITNESS: I told you that.

MR. HERSHENSTEIN: Let the exhibit be as it is; we will change it afterwards.

Q. Now, Commissioner Casey, if there is a meeting held without a permit what is done in the way of stopping the assemblage or the meeting?

A. That is according to what kind of a meeting it is.

Q. Well, what do you mean by that?

A. A meeting that is nobody there, the officer just tells them "You cannot have the meeting, no permit."

Q. If nobody is there?

A. I mean if the crowd is sufficient for that patrolman to handle it, if he hasn't got a permit he is informed of such and he is not allowed to hold the meeting.

Q. You mean is informed that he cannot have the meeting?

A. He is violating the law.

Q. And he is warned?

A. Yes, sir.

Q. If it happens a second time is he likely to be arrested?

A. No.

Q. There would be no possibility of arresting a group of people who gathered together to talk the first time that that group gathered under any powers of restriction of lawful assemblage?

A. No, sir.

Q. You are familiar with the incident of the arrests made for unlawful assemblage in respect to CIO workers and others?

A. When was that, Counselor?

Q. November 29th.

A. I am.

Q. How do you distinguish that policy of your department and the police department from the example you have just given me where, as I understand it, you say that if people gather together you just warn them, tell them to get a permit?

A. That was an unlawful assembly; they advertised in the papers how they were going to come in three thousand strong and march in the city and openly defy the police department.

Q. Now, you say they advertised in the papers?

A. Yes, sir.

Q. Did you see any advertisement in the papers?

A. There were statements in the papers rather, no advertisement; excuse me.

Q. Now, let us be practical, Mr. Casey. Isn't it a fact that you don't believe everything you see in the newspapers?

A. Well, I always read between the lines too.

Q. Now, isn't it a fact that your highest official of your community has only recently complained that the newspapers were distorting the news against him entirely?

MR. HAMILL: I object.

A. He can answer that for himself; you are having him here.

MR. HAMILL: How does that bind this witness?

MR. ERNST: I just wanted to know if he knew it.

Q. I just asked. Do you know whether Mayor Hague——

MR. HAMILL: Object.

Q. (Continuing.) —issued a statement——

MR. HAMILL: Object.

Q. (Continuing.) —indicating that what you see in the newspapers shouldn't always be believed? I just want to know whether you know it or not.

MR. HAMILL: That may have been when Mr. Ernst made the statement that machine guns would crack on the streets of Jersey City and he couldn't believe it, that Mr. Ernst meant it.

A. Your Honor, I think Mayor Hague can answer for himself that question.

Q. I just want to know whether you know about the statement. I am not asking whether you believe it.

A. I am just answering for myself.

Q. I just want to know if you believe the statement.

A. I am not going to argue about it.

MR. ERNST: Judge, I just want to ask the witness if he knows of the statement.

THE COURT: I sustain the objection.

THE WITNESS: What's that, your Honor?

THE COURT: I sustain the objection. Let me ask one question:

Do you remember, Commissioner Casey, what newspapers or what issues of newspapers carried the statement you allege?

THE WITNESS: Yes, the Bergen Record, I think, on February the 22d; I think the Newark News on the 29th.

Q. Of what month?

A. Of February. I think the Newark News on the 28th or 29th of February; the Jersey Journal on the 24th of February, and the Hudson Dispatch, I think, on the 23d of February, 1937.

THE COURT: Did the statements purport to quote anybody?

THE WITNESS: Quoted—yes, they did, your Honor.

Q. And who did they quote according to your recollection?

A. Quoted Mr. Carney. I think the papers are here.

MR. HAMILL: We have the papers here if Mr. Ernst wants them.

THE COURT: You have the actual papers right here?

MR. HAMILL: Yes, we have the actual papers right here, the accounts in the newspapers.

Q. I just want to get the recollection of the Commissioner. As I take it, some time from around February there were quotes from Mr. Carney in the newspaper, which I take it in part were used as a foundation for your decision not to grant some permits; is that right?—in part. I am not saying exclusively.

A. Well, in part yes, but I wouldn't say wholly.

Q. Now, those were purported quotations from Mr. Carney, is that right?

A. Yes.

Q. In February, 1937?

A. Yes, sir.

Q. Did you ever get in touch with Mr. Carney to find out whether he had been properly quoted, assuming he was quoted, in those months?

A. I don't see why I should.

Q. I didn't ask you that.

A. I did not.

Q. I asked you did you ever. You didn't?

A. No.

Q. Do you ever in connection with the granting of permits request that you be shown a copy of the speech in advance?

A. Never asked for it.

Q. Do you believe that you have the power to ask for it and procure it?

A. Well, I have never done it.

Q. I just want to know whether you have.

A. It is not what I believe or what I think; it is what I do.

Q. That's right. Do you claim to have the power to ask it?

A. I don't claim anything.

Q. You don't claim to have that power?

A. No.

Q. Now, you do claim to have the power to have a petitioner indicate the subject of his speech?

A. What's that?

Q. You do claim to have the power to ask an applicant to outline the subject of his speech?

A. I have never done it.

Q. Now, Commissioner, if you will just keep that in mind a moment, we will go over a few applications. Let me make sure you understood my question. As I take it, you say that you have never done what?

A. That I have never asked anybody what their subject was going to be, not to the best of my knowledge.

Q. Do you dictate the letters that go out in respect to applications for permits if they are signed with your signature?

A. Yes, sir.

Q. Nobody ever signs your signature for you?

A. Why, certainly, my secretary has a perfect right to; I give him that power.

Q. Do you recall whether in respect to the correspondence with Mr. Rothbard and Spaulding Frazer you personally signed those letters that are offered?

A. Well, if I could see them I will tell you; if you will let me look at them I will tell you whether I did or not.

MR. HERSHENSTEIN: Those are not originals, those are copies. If you will give us the originals we will look at the signatures.

Q. Here they are. I show you letter of December 27, 1937, purporting to be signed by Daniel Casey.

A. That's me.

Q. Letter of December 30, 1937.

A. I signed that.

MR. ERNST: Is Mr. Rothbard here?

MR. STOFFER: He was here.

MR. FRAZER: He stepped out.

Q. Do you recall, Commissioner, an application having been filed around December 17, 1937, on behalf of the American Civil Liberties Union?

A. Well, I received it; if I got a copy of it I could tell you; offhand I couldn't tell you what dates I received it.

Q. Will you look at these exhibits?

A. Yes, I remember those letters.

Q. Now, in that application for a permit there was set forth the subject of the meeting, is that right? Just read it and answer yes or no, whether it was set forth. In the first paragraph, Mr. Casey, doesn't it say that "said meeting will be on the subject of civil liberties?"

A. Yes, sir.

Q. Then did you not write a letter in response to that application and say, "We would like to know the purpose of the meeting"? Look at the last paragraph in your letter December 20th.

MR. HAMILL: Your Honor please, the letters are in evidence. Whatever is in the letter, of course, he did say. What is the need of calling the Court's attention——

A. If it is in my letter it must be so, Counselor.

Q. No, I just want to refresh your recollection on your statement that you were not concerned with the subject of the meeting, what was being said is that right?

A. I said "to the very best of my recollection."

Q. Well, I have refreshed your recollection, so that at least in one instance you do find out what is to be said?

A. Yes, sir.

Q. Now, let us go further. In the letter of December 20th the applicant, through Mr. Rothbard, the attorney, replied specifically what would be discussed at the meeting, is that right?

A. Discuss civil liberties.

Q. Specifically going to petition the mayor and other responsible officials for the exercise of the rights of free speech, free press and other civil liberties, is that right? You find that there?

A. That's right.

Q. Now, in your letter of December 22d—I will quote from it so you can refresh your recollection further—you replied: "Since these rights and these other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated"? That is in your letter, isn't it?

A. That's right.

Q. Now, under what authority of the ordinance or otherwise, or for what purpose did you make that statement,

asking them to give you a bill of particulars as to the justification for their thinking they had a grievance?

MR. HERSHENSTEIN: Your Honor please, that is objected to; that is in reference to an inquiry made by Mr. Rothbard. He simply says, "If we have violated them," he asks, "In what respect have we violated them?"

MR. ERNST: That is exactly my point, that the Commissioner of Public Safety clearly, in our opinion, under the ordinance has no right to ask an applicant in advance "What are you going to say?", write back and say, "I don't agree to your position" and then make him give a bill of particulars on what he is going to say. If that isn't pre-censorship of free speech, what is? I want to know for what purpose and to what end he made the statement asking for a bill of particulars and saying he disagreed——

MR. HAMILL: Isn't it one of the (interrupted).

THE WITNESS: May I answer the question in my own way?

THE COURT: Yes, go ahead.

A. Counselor, my reason for that was this: I have received complaints from veterans, different business houses, for to stop certain people talking in our city. I guess you are aware of that.

Q. As of what time are you talking now?

A. I am talking right along.

Q. During December?

A. During that time.

Q. Prior to December 22nd?

A. Let me say a word; I am trying to explain to you what it is.

Q. No, no, just wait a minute. I want to know whether it is prior to December 22d.

MR. HERSHENSTEIN: He says about that time.

Q: No, no, I want to know whether you are talking about prior to December 22d because that is when you wrote.

A. To tell you offhand I couldn't say, I wouldn't go on record.

Q. All right. You are not sure whether it is prior or not?

A. I am not sure. We have received complaints, different people coming in there to talk, they came in there and the attitude of the citizens of Jersey City was that talking would cause riots, bloodshed and disturbance, and I as Director of Public Safety, it was my duty to protect life and property, which I was doing to the best of my judgment.

Q. Now, let's get that philosophy, we will go to that for a moment. Let us assume that Frank Hague——

A. I wish you wouldn't talk about Frank Hague, counselor; he can talk for himself.

Q. I am going to let him talk for himself, plenty. Let's assume that you and Frank Hague are desirous of making a speech at a street corner in some community in the United States and let us assume that the chief of police of that district procured a statement from twenty or fifty thousand workers saying they resented you and that you were dangerous, and that there would be a riot; do you think that you ought to be allowed to speak or not?

MR. HERSHENSTEIN: Wait a minute.

A. I wouldn't go there.

Q. What?

A. I wouldn't go there; if I wasn't wanted I wouldn't go into any community where I am not wanted.

Q. Now, let us assume that you go into New York—and I take it you go there at times?

A. I do, regularly.

Q. Do you ever make a speech there?

A. I do not.

Q. Do you intend to?

MR. HAMILL: I object to that question. Let us be orderly about it.

THE COURT: Sustained.

Q. Let us take it this way, Mr. Casey: Your theory is that if people protest against a meeting that then you are afraid there may be a riot and that therefore you deny the permit, is that it?

A. Well, when it will draw a crowd that is hostile—mob psychology is a terrible thing; you will have to agree with me on that.

Q. No.

A. You don't agree with me. And I say if you get a crowd of twenty or twenty-five thousand hostile people it would take a reginfent of soldiers to stop them from committing riot and violence and that is what we are trying to stop.

Q. Now, in this particular situation do you believe for one moment that Hugh Kelly would come there and make a disturbance?

A. He is there.

Q. Mr. Kelly, for example, or any of the veterans or any of the people at the Armory?

A. Mr. Kelly lives in Jersey City, has lived there all his life, is a veteran.

Q. I didn't ask anything about where he lived.

A. Just a minute. He is, I think, director or something of the veterans of the state.

Q. Mr. Casey, will you please——

MR. HERSHENSTEIN: He is trying to answer.

MR. ERNST: I didn't ask him, your Honor please, where Mr. Kelly lived——

MR. HEISHENSTEIN: You spoke of Mr. Kelly.

MR. ERNST: Or what he is director of. I merely asked him did he believe that Mr. Kelly or any of the people that protested would have gone to a meeting and committed violence.

A. That is hard for me to say. I wouldn't say Mr. Kelly would but Mr. Kelly is not accountable for the actions of 25,000 other people.

Q. All right. Do you believe that any one of the persons from whom you had a communication, who signed any communication of protest, ever, at any meeting, would have gone with a gun or brickbat or stone and committed violence?

A. That is hard for me to say.

Q. You are not sure of it?

A. I wouldn't give an opinion on it.

Q. Now, let's assume that some other person in the community applied for a permit and ten thousand or twenty, whatever your figure was, of the workers of the community would write you a letter and say, "Commissioner Casey, if this man speaks there may be a disturbance," would you take a similar position or would you discriminate one as against the other?

A. I would use good sound judgment on it, on how I would act.

Q. Now, if you got a communication from any group saying that there would be twenty thousand people protesting and there might be a disturbance wouldn't you act always the same?

A. No doubt about it; if there is going to be a disturbance, that is my duty to prevent it.

Q. Now, do you look into the facts at all of whether the applicant is going to create a disturbance?

A. The applicant by his talk can create a disturbance.

Q. Do you look into the experience of the applicant in his speech-making elsewhere to find out whether it is likely he would make a disturbance?

A. I have checked up on it, yes. I found out where they had disturbances in other places where people have spoken.

Q. Now, you denied a permit for Congressman Maury Maverick. Did you make any investigation as to the hundreds, maybe thousands of speeches that this congressman in the United States Congress has made throughout the land for the past year or so?

A. I denied it, yes.

Q. No, did you make any investigation?

A. About him, no, not in the least.

Q. So you didn't know whether Maverick has or has not talked elsewhere in Jersey, New York or Pennsylvania without any disturbance?

A. I think he spoke here in a hall, if I am not mistaken, and he wasn't bothered.

Q. No, did you make any inquiry as to whether or not Congressman Maverick had spoken in open air street corner meetings in any other cities of the United States?

A. I did not.

Q. You did not. You didn't think it your duty to find out at all in coming to a conclusion as to whether he should speak, as to what his experience had been in other places?

A. I took into consideration the protests that I received against his talking.

Q. You didn't take into consideration at all, I take it, his experience at other street corner meetings?

A. No, I did not.

Q. Now, that applies also to Congressman Allen, you denied a permit for Congressman Allen to speak?

MR. HERSHENSTEIN: He happens to be one of the speakers of the Civil Liberties Union.

THE COURT: Where is he from?

MR. ERNST: Pennsylvania. The application and the correspondence show that the Civil Liberties Union

applied for four speakers. I am examining this witness as to the use of this alleged constitutional ordinance.

A. I am telling you why I refused them.

Q. As applied to those people.

A. The answer is the same.

Q. You didn't make any inquiry. Now, if you had heard and learned that Congressman Maverick, a war veteran, is one of the pronounced pacifists of the country would that have affected your judgment?

A. Not with a hostile crowd.

Q. Would it have changed your judgment and your conclusion if you had discovered that Congressman Maverick had made a thousand speeches, outdoor street corner meetings, in other cities of the United States without a semblance of disturbance?

A. Well, there is no doubt about that. The people didn't protest against him where he spoke.

Q. Now, let's take Congressman O'Connell. Did you make any inquiry prior to the refusal of the permit under the application of December 22d as to whether or not there had ever been a single disturbance anywhere in the United States in a hall or out where Congressman O'Connell spoke?

A. Never bothered.

Q. Never did?

A. Never got any complaints, never saw of any complaints where he was talking.

Q. But you didn't make any inquiry?

A. I didn't, no.

Q. You didn't think it was your duty to make any inquiry from the congressmen themselves in view of the fact——

A. The same situation, counselor, didn't present itself to the Director of Public Safety or the mayor of that city where they spoke that I was presented with here in Jersey City.

Q. I understand that fully, but I didn't ask you that. I asked you did you make—and I now ask you again did you make any inquiry whatsoever as to the past experience record of these three congressmen as to any possible disturbance.

A. I didn't inquire about them, no, only what I read in the papers in reference to them.

Q. And you believed what you read in the papers?

A. I told you before I can read between the lines.

Q. All right; and you read in the papers prior to December 22, when the application came in, something about Congressmen Maverick, Allen, and O'Connell possibly making speeches which lead to disturbances—you don't mean to imply that?

A. I didn't say that.

Q. What did you read in the papers prior to December 22d?

A. Well, I couldn't tell you what I read, it is so long ago. I have read quite a lot of articles about it.

Q. What is the general impression you got of these Congressmen from the papers?

A. Well——

MR. HAMILL: I object to that.

MR. ERNST: His best recollection of his impression.

MR. HAMILL: Well, his best recollection is that he refused the permit.

A. Well, my best recollection and what I think might not agree with what you think.

Q. No.

A. I am entitled to my own opinion, I think.

Q. Sure.

A. I don't have to express it.

Q. I would like to know what your impression was from the newspapers.

A. I don't feel like expressing my opinion.

Q. You don't like to. Now, there is a fourth person on that application, a man named Ernst. Did you look up whether he had spoken around at street-corner meetings, and whether there had ever been disturbances?

A. I never heard of the gentleman until I saw his name on the application.

Q. So he was not stamped as not being allowed to come into Jersey City, in your mind, because of being a Red or radical or dangerous, is that right, December 22d?

A. I forgot all about Mr. Ernst at the time.

Q. What?

A. I forgot all about him. I thought you were out of the picture.

Q. December 22d, this is. At that time was there anything in your mind that would lead you to believe that the fourth speaker, Ernst, would, by what he would say at a meeting, create a disturbance?

A. Not at that time, no, sir.

Q. Not at all. But at that time, you declined to grant a permit?

A. Certainly.

Q. All right.

A. And I gave you my reasons for it.

Q. All right, we will come to those in a moment.

Now, one of the reasons that you denied the permit was, and there are many of them, I take it, that the civil liberties that these men discussed prevailed in Jersey City. Is that one of the reasons?

A. What is that?

Q. If I am not clear, let me give it to you again.

A. That what prevailed in Jersey City? I don't get what you mean.

Q. This correspondence says that these speakers were coming to complain, as they saw it, about the absence of certain civil liberties. The correspondence shows that you wrote back and said that the application was in error be-

cause the civil liberties to be discussed prevailed, that there were such civil liberties, and you disagreed; and so I ask you, isn't it a fact that one of the grounds on which you denied the permit for these four speakers was that you found, as stated in your letter, that they were going to state grievances to the Mayor about the absence of civil liberties, which grievances you wrote in the letter were unfounded; isn't that one of the reasons for denial?

A. If I wrote it, it must be so.

Q. I am asking you, in addition to being so, wasn't it a fact, in your judgment, in denying these men the right to speak in Jersey City?

A. Do you mind letting me see what I stated in that letter?

Q. The letter, yes; right here. I can't give you the original, but this is the letter (showing to the witness).

MR. HERSHENSTEIN: I am afraid Mr. Ernst has misinterpreted that sentence he now refers to the witness. That is not a reason why any permit was refused, or grounds for a refusal. It is a statement by this Commissioner in reply to a question by Mr. Rothbard. He asked him what the civil liberties were we were denying. He said, "We don't deny any such civil liberties. Will you tell me what we are denying?"

That is not a reason he gave for the refusal of any permit. Read the letter.

MR. ERNST: The letter reads, we may as well have this in the record——

MR. HERSHENSTEIN: Yes, I want it in.

MR. ERNST: "In my letter to you of December 20, 1937, I requested you to let me know what is the purpose of the meeting and who are the speakers who will address the meeting."

End quote for the moment, and I take it that Mr. Rothbard gave you the names of the speakers who

would address the meeting, and answered your inquiry as to the purpose.

Going on with the letter: "You informed me by the letter hereby answered that the purpose of the meeting is to petition the Mayor and other responsible officials for the expression of free speech, free press and other civil liberties."

Continuing with the letter:

"Since these rights and these other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated."

Q. Now, I ask——

MR. HERSHENSTEIN: Read the next paragraph. There is no denial of a permit.

MR. ERNST: "You further inform me that on account of the delay in obtaining the permit it may become necessary to substitute one or two other speakers in place of some of the speakers originally scheduled. Will you please let me know who is the substitute speaker or who are the substitute speakers whom you intend to have take the place of the speakers mentioned in your letter."

MR. HERSHENSTEIN: There is no denial of a permit in that letter, sir.

Q. Now, I ask the witness this question: In order to make up your mind as to whether or not you should grant a permit, you made an inquiry as to the purpose of the meeting, is that right?

A. Yes.

Q. In order to get to a conclusion in your mind as to whether or not you should allow the meeting, after the purposes were set forth, you went further and wrote back and said: "I don't agree with the basis of your purpose because

in effect," you said, "your purpose is no good because we have got civil liberties," is that right?

A. Well, we have civil liberties.

Q. And you said so?

A. Yes, I said so.

Q. Now, for what purpose did you include in a letter in regard to an application for a right to a street-corner permit your opinion as to whether you have got civil liberties, if it were not in aid of making up your mind as to whether or not you would grant the permit? What other possible reason for it was in the letter? Is there any other possible reason, or justification for it?

A. Well, at that time I couldn't state now how I made my mind up to it. I must have had some reason when I done it.

Q. You don't have any general rules and regulations laid down, and standards, as to what kind of subjects may be discussed, and whether people can be for or against things; you have no rules and regulations?

A. I have no rules and regulations governing that, no.

Q. It is just good common sense——

A. Good common sense and sound judgment.

Q. And reading the newspapers——

A. Now, just a minute.

Q. Just a minute; and reading the newspapers between the lines?

A. Well, I——

Q. Didn't you say that before?

A. I did, yes.

Q. Now, that is one of the elements.

A. But you are misconstruing my meaning.

Q. Now, will you explain what you mean by reading the newspapers——

A. I mean by using good sound judgment, to stop the commission of violence, riots and bloodshed.

Q. That is right.

A. That's why I refused to issue the permits.

Q. That's right. Because in your judgment——

A. In my judgment, yes.

Q. —you thought that there might be some violence?

A. No doubt about it.

Q. All right, that is what you thought. Now, you had no evidence that Congressman Maverick, Allen, O'Connell or Ernst would preach violence; did you have any indication of that?

A. It wasn't what they would preach, but how the mob that went there would take it.

Q. That is right. So that if they would have preached pacificism, which Maury Maverick preaches throughout the land, and the mob didn't want to hear it, you would be afraid of a riot and you wouldn't allow the meeting?

MR. GLAVIN: Oh, I object to that on the ground that he is trying to get from this witness and probe into his mind what he would do under certain circumstances. There is a set of facts here on a meeting, and those facts should be adhered to, and what he did, not what he would do under other circumstances. He could go on indefinitely, setting out cases for him that he might rule on.

MR. ERNST: I will put the question otherwise, your Honor.

MR. GLAVIN: What difference would it make?

THE WITNESS: Just a minute, your Honor.

THE COURT: There is no question pending.

MR. ERNST: I will state it otherwise.

Q. In denying a permit of this nature, you are not concerned with what the speakers are going to say, is that it?

A. I am not concerned with what they are going to say if they are not going to commit violence and riots and bloodshed.

Q. If not what?

A. If riots are not committed.

Q. But this application for the three Congressmen, for example, was denied irrespective of what they would say, because you feared there would be disturbance?

A. To the best of my knowledge I received protests against them talking.

Q. But you didn't know what the speakers would say, did you?

A. No, I didn't, but they protested.

Q. That's right.

A. Against talking.

Q. So you denied the permit without any regard to what the speakers would say, and solely because of the protest?

A. The protest, yes.

Q. Solely because of the protest. Now, if the protest is substantial enough, you deny the permits, is that right?

A. By all means, if violence is going to be committed, and bloodshed and riots.

Q. And you do not believe it is the duty of your police department and yourself to protect the rights contained in the constitution of the State of New Jersey and the United States; the right of peaceful assemblage and free speech, even against the protest of a mob?

MR. GLAVIN: I object to it on the ground it calls for a legal conclusion, and there is an ordinance in effect in Jersey City under which Commissioner Casey is operating, and what he thinks or what he does not think is of no concern and is immaterial in this case.

THE COURT: Well, let me put an extreme case. I don't want to trap you, Commissioner, and maybe I will just leave this question in the air:

Supposing, for instance, the Chief Justice of the United States wished to come and speak in Jersey City, and for some reason the people of Jersey City objected

to his speaking, protested against his speaking. I mean that is possibly—not only possibly, I am sure it is actually a defensible case.

MR. HAMILL: Yes.

THE COURT: Would, under this ordinance, either the authorities in Jersey City or the Commissioner feel that if the protests would result in their opinion in bloodshed and riots, that the Chief Justice should not be given police protection?

THE WITNESS: That is a different case entirely, your Honor. The Chief Justice wouldn't have——

THE COURT: No, no, I am assuming it. I know it is a fanciful case.

THE WITNESS: Well, that——

THE COURT: I know it is fanciful, but I am assuming it.

THE WITNESS: Well, that is very different——

MR. HAMILL: I would rather say I will let the court answer that.

THE WITNESS? I think you had better decide that yourself, your Honor.

MR. HAMILL: Suppose the impossible happened, what would you do?

MR. ERNST: May I put it this way, which is not fanciful at all, and may pose the same problem:

Harold Ickes, secretary of the President's cabinet, is an active member in the American Civil Liberties Union. He actually spoke in New York City at the annual dinner of the American Civil Liberties Union in New York City. Now instead of Chief Justice Hughes, let us assume that the American Civil Liberties

Union made an application for Harold Ickes to speak under its auspices in Jersey City, and then you had the protest which the Judge hypothetically assumed, what would you do?

MR. HAMILL: I will carry on from there.

MR. ERNST: Now, I would like the witness to answer.

MR. HAMILL: I will take your answer.

MR. ERNST: No.

MR. HAMILL: Since you put in evidence the fact that Mr. Ickes was at a dinner, I will take your answer.

MR. ERNST: I would like.

MR. HAMILL: And suppose he did come, and it would start murder and bloodshed and riots, and disturbance, and you were Director of Public Safety, what would you do?

MR. ERNST: Mr. Hamill, you can ask me that when you put me on the stand.

MR. HAMILL: What would you do?

MR. ERNST: I would like to answer it.

MR. GLAVIN: Well, I object to it on the ground that under the ordinance the Commissioner has a right to investigate, and it is not fair and it is not proper to ask him what he would do under a set of circumstances, without giving him the opportunity to investigate.

MR. HAMILL: I would exercise my sound judgment.

THE WITNESS: Your Honor——

THE COURT: Wait a minute. We will answer that on Tuesday morning at ten-thirty, if we answer it at all. It is my motion day Monday, so we shall have to continue on Tuesday.

MR. ERNST: May I ask that the Commissioner by Tuesday, before Tuesday, give all the aid he can to our people, who will be over in his office on Monday to look through all the letters in the files?

THE COURT: I am sure he will.

THE WITNESS: You can have that, you can rest assured.

(Adjourned to 10:30 A. M. Tuesday, June 7, 1938.)

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

INDEX.

	Vol. 1 Page
Docket Entries	1
Bill of Complaint	4
Schedule "A": Public Notice	21
Schedule "B": An Ordinance	22
Schedule "C": Notice to All Workers in Hudson County	23
Schedule "D": Letter to William J. Carney, Dated December 20, 1937	25
Schedule "E": Public Notice as to Public Peace, etc.	26
Schedule "F":	
Letter to Daniel J. Casey, Dated December 17, 1937	27
Letter to Samuel L. Rothbard, Dated December 20, 1937	29
Letter to Daniel J. Casey, Dated December 20, 1937	30
Letter to Samuel L. Rothbard, Dated December 22, 1937	32
Letter to Daniel J. Casey, Dated December 23, 1938	33
Letter to Spaulding Frazer, Dated December 27, 1937	34
Letter to Daniel Casey, Dated December 28, 1937	35
Letter to Spaulding Frazer, Dated December 30, 1937	38
Letter to Daniel Casey, Dated December 27, 1937	39
Resolution Adopted by Veteran Organizations, Dated December 28, 1937	41
Letter to Daniel J. Casey, Dated January 3, 1938	45
Subpoena ad Respond	47
Notice of Motion for Bill of Particulars	48
Motion for Bill of Particulars	49
Order Requiring Bill of Particulars	53
Proof of Service	54
Bill of Particulars	55
Answer of Frank Hague, Daniel J. Casey, Harry Walsh and The Board of Commissioners of Jersey City	56
Amendment by Way of Supplement	61
Affidavit of Morris L. Ernst	62
Amendment to Defendants' Answer	69
Further Amendment to Defendants' Answer	71
Opinion, Clark, D. J.	72
Discussion	132
Objections to the Form of Proposed Decree	139

	Vol. I Page
Comments and Objections to Findings of Fact Submitted by Plaintiff	141
Objections and Comments to the Proposed Conclusions of Law	145
Findings of Fact and Conclusions of Law	146
Final Judgment and Decree	155
Notice of Appeal	159
Proceedings at Trial	160
Daniel J. Foley—	
Direct Examination	172
Cross-Examination	191
Re-Direct Examination	205
Re-Cross-Examination	205
Cross-Examination	209
David L. Clendennin—	
Direct Examination	213
Cross-Examination	237
David Silverstein—	
Direct Examination	245
Cross-Examination	268
James P. Sweeney—	
Direct Examination	284
Cross-Examination	306
Nancy Cox—	
Direct Examination	309
Cross-Examination	341
Jules Nydes—	
Direct Examination	343
Cross-Examination	350
Aaron Gilmartin—	
Direct Examination	357
Cross-Examination	366
Re-Direct Examination	372
Harry Arons—	
Direct Examination	373
Cross-Examination	376
Bella Kussy—	
Direct Examination	381
Cross-Examination	385

	Vol. I Page
Sol Chernofsky—	
Direct Examination	388
Cross-Examination	396
Morris Milgram—	
Direct Examination	402
Cross-Examination	411
Grace Milgram—	
Direct Examination	415
Cross-Examination	418
Re-Direct Examination	420
Morris Milgram (Recalled)—	
Direct Examination	421
Cross-Examination	422
Frances McKee—	
Direct Examination	429
Cross-Examination	435
Mildred Cox—	
Direct Examination	439
Cross-Examination	441
Ashley Carrick—	
Direct Examination	443
Cross-Examination	445
William C. Kernan—	
Direct Examination	447
Cross-Examination	450
Ashley Carrick (Recalled)—	
Cross-Examination	450
Re-Direct Examination	451
Timothy O'Brien—	
Direct Examination	454
Cross-Examination	465
Joseph Zarrella—	
Direct Examination	472
Cross-Examination	477
William Callahan—	
Direct Examination	478
Cross-Examination	481

Vol. I
Page

Francis Hunter—
Direct Examination 482
Joseph Zarrella (Recalled)—
Direct Examination 483
Francis Hunter (Resumed)—
Direct Examination 484
Cross-Examination 488
Thomas Hurley—
Direct Examination 494
Thomas Cometa—
Direct Examination 499
Cross-Examination 507
Joseph C. Glavin—
Direct Examination 514
Daniel Casey—
Direct Examination 529

Vol. II

Cross-Examination 790
Re-Direct Examination 838
Re-Cross-Examination 856
Mary Padla—
Direct Examination 858
Jean Palmieri—
Direct Examination 861
Lila Rocco—
Direct Examination 864
Grace Pecore—
Direct Examination 866
Cross-Examination 869
Dorothy Opitz—
Direct Examination 871
Charles C. Webber—
Direct Examination 878
Dorothy Opitz (Recalled)—
Direct Examination 880
Jeannette Kasen (Stipulated) 881

	Vol. II Page
Charles C. Webber (Resumed)—	
Direct Examination	884
Samuel Macri—	
Direct Examination	889
Cross-Examination	964
Re-Direct Examination	1012
Re-Cross-Examination	1018
Raymond Chasan—	
Direct Examination	1019
Frank Hague—	
Direct Examination	1030
	Vol. III
Cross-Examination	1395
Re-Direct Examination	1555
William Callahan—	
Direct Examination	1578

	VOL. IV Original	Print
Stenographer's minutes of hearing in D. C. U. S., District of New Jersey, May 26, 1938	83	83
Appearances	85	83
Colloquy	85	83
Statement by the Court re tentative decree	107	100
Proceedings in U. S. C. C. A., Third Circuit	108	101
Minute entry of hearing	108	101
Opinion, Biggs, J.	109	101
Appendix—Findings of fact and conclusions of law of trial court	141	128
Final judgment and decree of trial court	150	136
Ordinance of January 22, 1924	154	139
Ordinance of April 15, 1930	155	141
Dissenting opinion, Davis, J.	157	141
Judgment	185	164
Clerk's certificate (omitted in printing)	186	
Order allowing certiorari	187	165

INDEX TO EXHIBITS.

PLAINTIFFS' EXHIBITS.

Ex. No.	Description.	Offered Vol. I Page	Printed Vol. IV Page
1	Handbill	177	1
2	Stenographic Record	324	3
3	Stenographic Record	324	3
4	Leaflet	417	5
		Vol. III	
5	Card	1583	6
6	No Exhibit.		
		Vol. I	
7	Circular	457	7
8	Newspaper Picture From "Sunday News", May 8, 1938	476	8
		Vol. III	
9	Card	1583	..
		Vol. I	
10	Applications	539	9
11	Permit Granted for Street Meetings, Religious	539	9
		Vol. II	
12	Correspondence, Rothbard and Casey	687	9
13	Letters, Frazer and Casey	687	10
14	Form Used in Connection With Street Corner Permits	787	12
15	Pawnbrokers' Descriptive Sheets	688	12
16	Telegram, Dated May 10, to Daniel Casey From J. Harlan Cleveland, and Attached Papers	688	13
17	Application, Telegraphic, by Wm. N. Callahan, Managing Editor of "The Catholic Worker"	605	15
18	12 Letters of Protest	684	17
19	8 Letters, Dated Prior to January 1, 1938, Protests	685	18
20	Batch of Additional Letters of Protest	685	20
21	Protest of Jersey City Real Estate Board, Dated December 30, 1937	685	21

INDEX TO EXHIBITS—Continued.

Ex. No.	Description.	Offered Vol. II Page	Printed Vol. IV Page
22	Resolution From Community Center, Dated December 30, 1937	686	21
23	Letter, American War Veterans of Italian Extraction, December 29, 1937	686	22
24	Letter of Protest From Hudson County Post No. 2	687	22
25	Two Undated Letters of Protest	687	22
26	Five Protests	691	23
27	Letter With Lynch Resolution	691	23
28	Letter, "A Citizen", May 21	692	..
29	Page From "Jersey Observer", May 7, 1938	720	25
30	Card With Name of Witness Casey	726	27
31	Correspondence Re Denials of Permits	788	29
32	Circular Containing President's Message	933	33
33	Notice, Dated December 28, 1937	1064	35
34	Postal Cards Re Meeting of Veterans	1064	35
35	Notice of Meeting of Veterans	1067	36
		Vol. III	
36	Correspondence Between Mr. Hamill and Mr. Frazer	1200	37
37	List of Jersey City Plants	1222	44
38	Anti-Placard Ordinance	1225	45
39	Page 5, "Newark Star-Eagle", June 11, 1938	1338	..
40	"Newark Sunday Call", November 21, 1937	1341	47
41	WOR Radio Speech	1557	..
42	Clipping "New York Times", December 27, 1937	1557	49
43	Clipping "Jersey Journal", January 13, 1938	1558	51
44	Page 9, "Jersey Journal"	1559	55
45	Clipping "Jersey Journal", January 7, 1938	1559	57
46	Statement of January 6, 1938, at Armory	1560	59
47	Statement of Mayor Hague	1564	..
48	Picture of a Meeting, 1929	1574	..

INDEX TO EXHIBITS—Continued.

DEFENDANTS' EXHIBITS.

Ex. No.	Description	Offered Vol. III Page	Printed Vol. IV Page
1	Clipping	1591	61
2	Clipping	1591	..
3	Clipping	1591	62
4	Clipping	1591	62
5	Clipping	1591	62
6	Clipping	1591	62
7	Five Cards	1591	62
8	Bureau of Identification Cards	1592	62
9	Picture, Captioned "Jerry O'Connell With Communist Herbert Benjamin and Socialist David Lasser"	1592	63
10	Library Book Re Garland Fund	1592	63
11	Affidavit in the "New Masses"	1595	65
12	"Akron Times Press", May 27, 1938	1445	..
13	"Akron Beacon Journal"	1446	..
14	"American Republic Magazine" Re Dubinsky	1595	66
15	"Newark News", November 23, 1937, Item	1595	67
16	"Jersey Journal", Item of May 2, 1938	1595	69
17	Clipping "New York Times", May 24, 1937	1596	71
18	Clipping "New York American", March 9, 1937	1596	71
19	Clipping "New York Times", June 7, 1937	1596	71
20	Clipping "New York Times", March 29, 1937	1596	71
21	Clipping "New York Times", January 31, 1937	1596	71
22	Clipping "New York Times", January 15, 1937	1596	71
23	Clipping "New York Times", March 4, 1937	1596	72
24	Clipping "Herald Tribune", February 3, 1937	1596	72
25	Clipping "New York Times", April 24, 1937	1596	72
26	Clipping "New York Times", February 31, 1936	1596	72
27	Fish Report—Portions Identified	1590	73
28	Copy of Writ of Mandamus	1597	82
29	Copy of Return on Writ of Mandamus	1597	82

Tuesday, June 7, 1938.

Case continued.

Appearances as before.

THE COURT: Are you ready, Dean Frazer?

MR. FRAZER: Yes, sir. Mr. Ernst was examining Mr. Casey.

THE COURT: Oh, yes. I beg your pardon.

MR. FRAZER: Might I ask, before Mr. Casey goes on the stand, whether Mr. Hamill has had an opportunity of looking over the list of plants that I submitted to him, and whether he is willing to admit that they are located in Jersey City?

MR. HAMILL: If your Honor please, the evident purpose of this question, I am going to answer it, is to get something not into the record but into the newspapers; and that has been the trouble all through this case; that they succeed in getting evidence in, the Court permits it, then on reflection the Court strikes it out; then the newspapers have it. And that's the evident purpose, and his purpose was expressed in his words, that he wanted to paint the picture, and he doesn't care if he paints that picture according to the rules of evidence or not.

THE COURT: Mr. Hamill,——

MR. HAMILL: Had he seen me before this trial started, I would have given him all the information he wants.

THE COURT: Just a minute. I think——

MR. HAMILL: All but two plants, all but two of the plants are located in Jersey City.

MR. FRAZER: Thank you.

MR. HAMILL: Now, I hope that that will put a cease to this continual caterwauling and doleful and dismal nagging about that statement.

THE COURT: I think I only struck out one piece of testimony. I will verify that, though, if you want me to.

MR. HAMILL: There is the statement of everything except the Colonial Shoe Corporation, 2 High Street, that has moved away, and the Davis Baking Powder Company, and I think that has gone to Hoboken.

MR. ERNST: Thank you.

MR. HAMILL: Now, draw up a stipulation so that you won't charge me with bad faith in the newspapers; draw up a stipulation and I will sign it for you.

MR. ERNST: I understand the stipulation does not go to the extent of admitting that any of them are engaged in interstate commerce.

MR. HAMILL: No, merely for the fact that they exist in Jersey City.

DANIEL CASEY resumed the stand.

MR. ERNST: Your Honor, please, in regard to the subpœna duces tecum, Mr. Casey and Mr. Glavin made available to our representative, Mr. Britchie, what they said were the files in regard to applications. I am advised by Mr. Britchie that the total of the files consists of two bags of papers, two red folders, the total of the papers being about twice what would be in this bag. Under the circumstances it seems to me not reasonable to have us proceed without those papers being in court. I was led to believe that there were thousands of papers from Mr. Hamill's statement where he analogized the situation to bringing all the papers of the Register's office. Now I found there are probably less than two hundred pieces of paper alltold, all contained in two folders. I would like your Honor to instruct that they

be brought here because to a great extent our proof of discrimination and abuse of the statute, even if constitutional, rests on the absence of information in the files which we cannot prove without bringing them here.

THE COURT: Did Mr. Britchie go through the files?

MR. ERNST: Mr. Britchie went through the files.

MR. HAMILL: He had someone examine the files under the direction of the Court, and that was the disposition the Court made of the request made by Mr. Ernst.

MR. ERNST: Oh, no, I made no request to have them examined there; I issued a subpœna to have them brought here. Now, what the reluctance can be to bringing two bags in court I cannot imagine. There is no interference with the operation of the office because there isn't a constant flow of applications every day; it isn't like another office where we have to look back at the records, and I would like the records in court.

MR. HAMILL: If he is not entitled to the records he shouldn't have the records. He must then state why he wants it and why a representative, a lawyer I understand, from his office who called there would not be sufficient to give him the information he wants.

THE COURT: I suppose, Mr. Hamill, a party litigant in any case is entitled to anything that their subpœna calls for unless there is affirmative reason to the contrary. Now, as I understand it, the affirmative reason to the contrary on Friday was that there were too many records. That apparently was not the case. Now, of course, as I haven't seen the records I don't know whether——

MR. HAMILL: I didn't see them either, your Honor, I don't know what they are.

THE COURT: So that if they are only two small bags it seems to me they should be produced.

MR. HAMILL: Now——

THE WITNESS: I brought them here.

MR. HAMILL: It isn't because we don't——

MR. ERNST: Wait a minute. May I hear what the witness said?

THE COURT: He says he brought them here.

THE WITNESS: I brought what I showed your man yesterday.

MR. ERNST: Now, that stops that. May I have the bags?

THE COURT: Mr. Casey is not a lawyer——

THE WITNESS: No, I am not a lawyer and I don't profess to be.

THE COURT: He doesn't bother with these technicalities.

THE WITNESS: No, I don't; it is just a matter of routine.

MR. HAMILL: Now, what particular paper do you want out of those two bags?

MR. ERNST: I want all the bags and when it comes to introducing them in evidence it will be ample time for you to make an objection in due legal form.

MR. HAMILL: That is not the law, if your Honor please. He has no right to take the two bags and ask the Court to let him go on a fishing expedition. He must have something definite in mind. Let him tell the Court what he wants and the Court will rule on the question.

MR. ERNST: I will tell you the line of the inquiry, and it cannot be answered by calling for specific documents.

Number one: This witness under oath said that there had been no denials of permits back of, I think, 1936. He is mistaken. There were denials before then. He has said in effect that he knew of no applications for other than political or religious purposes. The records show that he is wrong, because he refused to permit for a peace meeting in 1933. The records contain evidence in respect to the denial of a permit requested on behalf of United States Senator Borah. We need not go into the hypothetical field of Ickes or Chief Justice Hughes, because the record is in the bag; the denial of the permit for Borah. The files show, among other things, that the Catholic Workers asked for a permit and we need the files to show what I may call the run-around given the Catholic Workers, and no denial. The American Civil Liberties Union asked for a permit. The files will show that the permit was never denied; merely delay, procrastination, and run-around. And I can go on, your Honor, on each item that will be found in the bag, including——

THE COURT: I think you will have to offer the evidence you want.

MR. ERNST: What is that, your Honor?

THE COURT: Offer the individual items that you want.

MR. ERNST: Well, let me have the bag.

THE COURT: I thought you just had it. Didn't you have it?

MR. ERNST: No, no. Mr. Hamill is declining to give me the bag.

MR. HAMILL: If that is what you want, and if you had told me and not been so frightfully secretive about purposes that need not be concealed, all this time would have been saved, Mr. Ernst.

MR. ERNST: If your Honor please——

MR. HAMILL: And your request would have been complied with.

MR. ERNST: I will tell the reason for my secretiveness. I do not trust the keeping of the records, and I wanted to make sure that they would not be doctored before they were in court. That is my reason.

MR. HAMILL: Well, if your Honor please,——

MR. ERNST: Have I reason for it? Yes. That will be brought out. I have reasons for it. I will ask this witness questions.

MR. HAMILL: And you are going to bring that out?

MR. ERNST: I will bring out the basis for my suspicion.

MR. HAMILL: And you are going to prove that, or have it stricken from the record?

MR. ERNST: I didn't say I was going to prove or do anything, nor do I want you to understand that I am limited in the course of my inquiry now in respect to Borah and other points I mentioned.

MR. HAMILL: Has counsel a right to stigmatize the records of a municipality unless he has proof to back up his charge?

MR. ERNST: You asked me, didn't you?

THE COURT: Where are they, Mr. Hamill?

MR. HAMILL: I asked you——

MR. ERNST: Let me have the bags.

THE COURT: The Commissioner said he had them. Where are they?

MR. ERNST: The Commissioner is willing. He brought them here. Let's stop this——

THE COURT: Where are the bags, Mr. Casey?

MR. ERNST: I want the two bags, where are they?

THE COURT: Are those the ones?

THE WITNESS: I think they are over there.

MR. ERNST: This is all there is?

By MR. ERNST:

Q. Now, I ask you, Commissioner, are these documents plus those which you brought to court when you were last on the stand, all of the documents relating to applications for permits, whether denied, held in abeyance or granted, during the last three years?

A. I couldn't tell you about the last three years. I wasn't Director of Public Safety for the last three years.

Q. Can you say that these are all the instruments which relate to such time as you were in charge of that office?

A. Yes, to the best of my recollection.

Q. Who would have a better recollection than you? Your secretary, may be?

A. No, my secretary—he notifies me about it; he files them when they come in.

Q. There is nobody in your organization that would have a more direct answer they could make than you?

A. No.

Q. In respect to whether these are the instruments?

A. I am responsible for them.

Q. And there is nobody in your office that could be sure that these are all the files?

A. Well,——

Q. You say it is to the best of your recollection. I just want to know if there is anybody else that might have a better recollection.

A. Well, they are filed by my secretary and the men in the office, and so——

Q. Your secretary is in court, is he?

A. No, he is not.

Q. What is the name of your secretary?
A. Walter Daly.
Q. Walter Daly.

MR. HERSHENSTEIN (as Mr. Ernst hands documents to associate counsel): Just a minute, please.

MR. ERNST: If your Honor please, I think it will save time to have one of my associates——

MR. HERSHENSTEIN: I know, but——

MR. ERNST: Just a minute. Let me finish my statement. I think it will save time to have one of my associates go through the bag. If the Court prefers, we can let the witness sit here while I look them through. It is entirely a matter of convenience and respect for the Court.

MR. HAMILL: Oh, I think that counsel cannot take it and just turn it over to his office, as it were.

MR. ERNST: My associate counsel, Mr. Fraser, will look them over, to save time.

Do you want me to hold the witness while I look them over?

MR. HAMILL: I beg your pardon?

MR. ERNST: Do you want me to go on and hold the witness while I am looking them over?

MR. HAMILL: Yes.

THE COURT: You don't have to sit there, unless you want to.

THE WITNESS: It is immaterial to me, your Honor.

MR. HAMILL: Maybe the Commissioner will find them for you, if you ask him.

THE WITNESS: Yes, I will be glad to help you, if I can.

MR. ERNST: No, he can't find what I am looking for. We are trying this case.

MR. HAMILL: Why? Have you padded the record yourself?

MR. FRAZER: In this little lull, it might be an opportune moment to suggest to the Court that ordinarily in the examination of a witness there is only one counsel on either side. On Friday there was one occasion when three defense counsel were making objections and speeches at the same time; and I am wondering whether the Court might not suggest to counsel that only one indulge in cross-examination.

MR. HAMILL: Isn't that a matter for the Court to decide in each particular instance? The Court has the power to bring down the gavel and stop counsel at once, and I have seen the Court exercise its power in that respect.

THE COURT: You never saw me use the gavel, Mr. Hamill.

MR. HAMILL: Well, I have seen your Honor sternly bid a counsel to be seated, and he took his place, as he should.

THE COURT: I think I can manage all right.

Q. Mr. Casey——

A. Yes, sir.

Q. I want to clear up a point on the record. I understood you to testify that there were no printed forms in connection with the issuance of permits. Is my recollection correct as to your testimony?

A. I don't think so.

Q. Well, what are the facts as to the types of forms used for permission for meetings?

A. They issue a form with a duplicate attached. I think you have got a copy of the stub of the permit there in your hand.

Q. I show you a form and I ask you if that is the form that was used in connection with street-corner permits?

A. That was.

MR. ERNST: I would like to have it marked for identification.

(Marked Exhibit P-14 for identification.)

THE COURT: May I see it?

(Exhibit P-14 for identification handed to the Court.)

THE COURT: This is the granting, isn't it? This isn't the——

THE WITNESS: That is not the application, no. That is an order that I got from the Commissioner's office for it.

THE COURT: Yes, this is the granting of the permit.

THE WITNESS: To issue that permit, to give them —that was held in the Chief of Police's office before I went in as Director of Public Safety. We were notified by the Director of Public Safety's office to issue a permit, which we did give them, that permit.

Q. Was there a stub in connection with that form, in evidence?

A. I think the stub is on it. That was all filed in headquarters. I got that from headquarters. I done everything that I could to satisfy you.

Q. Very nice, thank you. I noticed on this form marked for identification that there is a statement there in regard to permits for issuing circulars. Is that right, Mr. Casey? Will you just read it? It says, "City Police Department, headquarters. To whom it may concern: Permission is hereby given to (name) (address)" and then it says "to sell or canvass, to distribute samples or circulars, to hold parades or meetings, to solicit and take orders."

Is that what the form reads?

A. Yes, sir, that is what it reads, but they never issued any permits to give out circulars, had no right to do it under the city ordinance; I couldn't give it if I wanted to, never issued orders for them to be given out. That circular, that printing matter I am not responsible for.

Q. So whoever had this printed up did it in disrespect for the law, is that true?

A. Well, I am only accountable, counselor, from the time I have been Director of Public Safety.

Q. I didn't ask you that. Answer my question.

A. I am trying to.

Q. Let's start over again. I didn't ask you anything about accountability, never referred to it. I asked you just one question: Whoever did have it printed up had it printed in disrespect of the law?

MR. HAMILL: Oh, that's a legal question; your Honor will decide that.

A. I think that that is scratched out there, isn't it scratched out?

Q. I didn't ask you whether it was scratched out; I can see whether it is scratched out.

A. Just a minute now. Why can't you be fair?

Q. Can't you answer my question?

A. I am trying to, not the way you want me to.

Q. Just yes or no.

A. I am trying to answer it fair.

Q. Just yes or no.

A. I am not going to answer it yes or no without my explaining. I think my constitutional rights gives me the right to that.

Q. You are claiming no privilege outside of your constitutional rights?

A. Well, I am claiming privilege, too.

Q. Oh, you are. Get that on the record.

A. Certainly, that is my privilege.

Q. I ask you whether this form was in your opinion printed with reference to distribution of samples and cir-

culars without respect to any law that gave you the power to issue such circulars.

A. Well, I won't say that.

Q. Well, what would you say in respect to the form as to circulars?

A. With reference to circulars it was wrong, it was printed wrong.

Q. That's all.

A. That is my honest opinion.

Q. Right. Now, these permit applications granted slips were not always used for all meetings, were they?

A. To the best of my knowledge I think so.

Q. I want to show you from your office some slips entitled "Pawnbrokers' descriptive sheet" and ask you——

A. Well, that got in there wrong, I think; that is something that had no right in that envelope. That has nothing to do with this case, I don't think.

Q. If you will just wait a moment—you don't want to make statements that aren't true, because these are also stated on the other side "Gospel permits."

A. That's all right, they were——

Q. Will you look at this exhibit and tell me whether it represents permits for meetings allowed.

A. Yes, they do.

MR. ERNST: I will mark this for identification.

THE WITNESS: Could I explain that to you, counselor? Don't you think——

Q. I will ask you my own questions; your counsel have ample time to ask you questions.

A. All right. Thank you.

(Marked Exhibit P-15 for identification.)

Q. We will proceed much more quickly if you will just answer my questions, we will get through in a few hours.

A. That is what I am trying to do.

Q. As to this Exhibit P-15 for identification, I ask you whether you want to change your answer that there were

always forms of permits granted handed out along the lines of the previous exhibit.

A. Well, I would like to set you right on that. As far as those permits, they are not issued from my office, haven't been issued from my office. They were handled by Lieutenant Mahoney in the Bureau of Identification in the record room. He is the man has charge of those permits and they were issued from his office. He had the privilege of doing that under the former directors of public safety.

Q. And when did you become Director of Public Safety?

A. I think it was—I was elected on the 10th, I think it was, and on the 18th I was sworn in.

Q. Of what year?

A. 1937.

Q. And the month?

A. May.

Q. May. So I take it your explanation is that until you were in office the Director of Public Safety did not always issue the permits but somebody in the Police Department did.

A. It was routine work.

Q. Now I show you your Exhibit P-10 for identification and ask you whether or not the instrument does not show that on August 1, 1933, an application for the United Front Anti-War Committee for a meeting at Claremont and Jackson was denied.

MR. HAMILL: What was the year, Mr. Ernst?

MR. ERNST: 1933.

A. Yes, that 's right.

Q. Do you know whether or not there is any document, piece of paper of any nature, in the files of your office indicating the reason for such denial?

A. No, sir, there is not.

Q. There is not. Now, I ask you in respect to the application of Saturday, August 26, 1933, of the Scottsboro

Committee for a meeting at Jackson and Orient Avenues, whether or not that was not denied.

A. It says so; if it says so it is true.

Q. All right, I just want to make sure it is true. Now, is there any piece of paper or instrument, written, printed, or typed, in the files of your office indicating the reason for that denial?

A. No, sir, there is not.

Q. You would say that both of those meetings were denied on the ground that they might creat public disturbance?

A. Most likely; I don't know why they were denied; I wasn't Director of Public Safety at the time.

Q. I want to ask you about the words "most likely." Is there any other reason for which they were denied?

A. I couldn't tell you.

MR. HERSHENSTEIN: He has testified he was not Public Safety Director at that time and doesn't know.

Q. I am asking the Commissioner the question because the law, even if it is constitutional, only gives on basis for denial and I am asking the Commissioner whether there is any possible other basis for denial, because he said "Most likely."

A. I don't know the basis for denial.

Q. But you do know that the only legal basis under the ordinance is possible disturbance?

A. That's right.

MR. HERSHENSTEIN: I object, your Honor please, what he knew at that time in 1933.

Q. Now, Commissioner, do you know about the denial of a permit for United States Senator William E. Borah to speak at Jersey City in May of this year?

A. I don't know a thing—this year?

Q. This year.

MR. HAMILL: Your Honor please——

MR. ERNST: Just does he know about it.

A. May of this year?

Q. May of this year; do you know about it?

A. I don't know a thing about it.

Q. You don't know a thing about it?

A. To the best of my recollection this is the first time I think I heard it.

Q. And if a permit for William E. Borah had been requested and denied, no one in your office had authority to deny it other than yourself, is that right?

A. That's right.

Q. Now, I want to show you a telegram addressed to Daniel Casey, by J. Harlan Cleveland, vice-president American Whig Cliosophic—C-l-i-o-s-o-p-h-i-c—Society, dated May 10th, together with purported copy of letter written on the stationery of Department of Public Safety, with typewritten underneath it "Director," addressed to the same Mr. Cleveland, together with two extra copies of the same letter, and ask you if you will look at those instruments and tell me whether or not those refresh your recollection.

A. They do but—just a minute. Could I answer that was not a request from Senator Borah.

MR. HERSHENSTEIN: Is this the telegram which you say constitutes the application for a permit for Senator Borah, is that right?

MR. ERNST: I just want to know now whether this refreshes his recollection.

THE WITNESS: It does.

MR. ERNST: Now I want to mark this for identification.

THE WITNESS: Just a miinute, I want to explain it.

Q. I will explain it.

A. Just a minute. That wasn't from Senator Borah.

THE COURT: That will be in evidence.

Q. I said it wasn't.

A. It was a very tricky question you asked me.

Q. I said it was the American Whig Cliosophic Society and I spelled the name.

Q. You didn't, you said from Senator Borah.

Q. And I spelled the name.

A. You said it was from Senator Borah. That's the way I understood the remark from you.

MR. ERNST: I ask it be marked for identification.

(Marked Exhibit P-16 for identification.)

THE COURT: May I see it?

MR. ERNST: I would like to read this into the record, if I may, your Honor.

THE COURT: I would like to see it first.

MR. HAMILL: We object to the reading of any of these into the record.

MR. ERNST: I offer it in evidence.

MR. HAMILL: I object to it being offered in evidence, it is merely used to guide counsel in cross-examination.

THE COURT: It may be offered in evidence.

MR. HAMILL: Your Honor will grant me an exception?

(Which exception is hereby alowed and sealed accordingly.)

(Sealed)

(Received and marked Exhibit P-16.)

MR. ERNST: Now, having offered it in evidence, your Honor, I shall read it into the record. The telegram reads as follows: "Daniel Casey, Room 27, City

Hall" with a rubber stamp notation "Received by the Department of Public Safety May 10, 10 A. M. 1938."

The telegram reads: "We request permit for speech by Senator William Borah, sponsored by American Whig Cliosophic Society of Princeton University, date Thursday evening May 12th at 9 P. M. Journal Square. Please wire reply by Western Union collect as soon as possible to Whig Hall, Princeton," signed J. Harlan Cleveland, V. P., American Whig Cliosophic Society.

The answer reads: "Department of Public Safety, May 1, 1938, addressed to Mr. Harlan Cleveland, Princeton, New Jersey, Dear Sir: I have your telegram in which you request a permit, I assume for an outdoor meeting to be sponsored by your society for Thursday evening, May 12, 1938, at 9 P. M., at Journal Square, Jersey City. I have made an investigation of the facts and circumstances pertaining to this application and believe it to be proper to refuse the issuance thereof. Your request for a permit therefore is denied on the ground that the said meeting would tend to create disturbance and disorderly assemblage. Yours truly, Director."

Q. Now, I ask you, Mr. Casey, did you sign that letter?

A. If I see the original letter I can tell you. I told you Friday that I gave my secretary the authority to sign my name.

Q. Will you testify whether or not this letter was sent out by you, copy being in your files?

A. Yes, it was sent by me.

Q. Now, Commissioner, how many police have you got in Jersey City, total in the police force?

A. Well, around nine——

Q. Approximately.

A. Nine hundred; everybody in the department, cleaners and everybody else. I cannot say definitely right to the very number.

Q. It is approximately nine hundred?

A. Around that.

Q. Do you know whether or not that is not the largest police force in the United States for any city of a population the same as Jersey City?

A. It is what?

Q. The largest police force in the United States?

A. It is the largest police force, you say?

Q. In proportion to population; do you know whether that is true?

A. I have never gone into that. I know that we have the cleanest city in the United States.

Q. Did you hear me ask you anything about that?

A. Well, I am just telling you why we need the police.

Q. Just want to make a speech.

A. No, I think you are trying to make a speech.

Q. Now, will you please wait to talk cleanliness until your attorneys ask you?

A. Thank you.

Q. It won't help you at all, it just wastes time.

Now, I take up with you telegraph denying to the Princeton society the right to have Borah to speak, that you believed that there would be a disturbance in Journal Square?

A. I know that Senator Borah wasn't going to talk there; it come out in the papers before I sent the letter, I think that his name was mentioned without his authority, if I remember rightly, like several others whose names have been mentioned where they had no authority to send their names in.

Q. Commissioner, I want to ask you whether or not you didn't advise that you wouldn't allow the speech because of the fear of disturbance; is that a fact?

A. Correct.

THE COURT: Who is Mr. J. Harlan Cleveland, does anybody know?

MR. ERNST: J. Harlan Cleveland is described in the papers——

THE WITNESS: He is a student at Princeton.

THE COURT: Is he president of the fraternity?

MR. ERNST: Vice-president of the American Whig Cliosophic Society.

Q. Now, in regard to the possible disturbance if Senator Borah spoke, and we will get to the question of whether he was coming or not, in regard to the disturbance, did you have any protests from anybody against Senator Borah speaking?

A. I don't remember.

Q. You don't remember. Do you know whether or not there was a single piece of paper with a written or printed protest in the entire files of your office, indicating that anybody objected to the right of Senator Borah under the Whig Society to speak in New Jersey?

MR. HERSHENSTEIN: Now, if your Honor please, the witness has stated that he has investigated and found that Senator Borah was not to be the speaker, and for that reason he probably made no investigation as to Borah.

THE COURT: I didn't understand that Senator Borah had made an application. Did you receive an application from Senator Borah?

THE WITNESS: Senator Borah never made an application to me for a permit to speak.

MR. ERNST: If your Honor please, the questioning I am conducting is entirely proper, for this basic reason: with the situation in Jersey City, where nobody knows who will be allowed to speak or not, there is no use in developing a multiplicity of complaints and suits. The orderly procedure is to find out whether or not

Casey will approve of Borah before you even get Borah on a date.

MR. HERSHENSTEIN: Well——

MR. ERNST: And we will tie that up with a long line of applications, of changes of dates, of delays, of procrastinations, of run-arounds; and so there is no use of getting people for a date and then have him drag you over the date.

MR. HERSHENSTEIN: You are speaking to the newspapers?

MR. ERNST: I am speaking to your question as to the propriety of my inquiry, because this man thinks Borah wouldn't have come.

THE COURT: What did you do, Commissioner——

MR. HAMILL: Your Honor, that isn't——

THE COURT: Just a minute. What did you do after the receipt of that telegram, do you remember?

THE WITNESS: Offhand, no. I saw an article in the paper before it was answered that Senator Borah told this society at Princeton that he wasn't coming. That's all very technical, your Honor. Senator Borah —I would never refuse Senator Borah as an individual a permit to speak. I didn't receive that from Senator Borah.

MR. ERNST: If your Honor please, I want to ask the witness this question:

Q. Do I understand, and you have so indicated, that if the American Civil Liberties Union files an application for Senator Borah to speak in Jersey City, at a convenient place in relation to traffic, the permit will not be denied?

A. Just a minute. When I come to that bridge I will cross it.

Q. I am asking you, because you said you would never deny the right to Senator Borah to speak.

A. As an individual, no.

Q. Now then, I want to ask you this, whether or not a particular man is going to be allowed to speak and whether or not there will be disturbance whether a particular man speaks or not depends on the auspices of the organization under which he is speaking?

MR. HERSHENSTEIN: He didn't say that.

A. No——

THE COURT: No, he is asking him.

MR. ERNST: I am asking the question.

THE WITNESS: Do you want it read?

Q. It must be one or the other.

MR. HERSHENSTEIN: Oh, it does not have to be one or the other, sir.

A. I told you that when that presents itself to me I will act accordingly. I don't believe in crossing a bridge until I come to it. I told you that before.

Q. But, Commissioner, I didn't cross your bridge.

A. Well, you are trying to make me cross it before I come to it.

Q. Commissioner, you crossed it when you said gratuitously to the Judge, and we will have it read back if you want it——

A. No, that's all right. I know what I said.

Q. (Continuing.) —that you would never deny an application for Senator Borah.

A. No, I wouldn't, as an individual, no.

Q. As an individual?

A. Because I don't think that Senator Borah goes out having circuses.

Q. All right.

A. Nor to perform circuses.

Q. Now, I want to ask you this: you would never deny him an application as an individual?

A. No, sir; I would not.

Q. Again I ask you, you mean that you might deny him an application under the auspices of certain organizations?

A. I told you I would consider it and when I come to it I would cross it.

Q. I want to ask you this: Do you know of any circumstances under which you might possibly deny Senator Borah the right to speak in Jersey City?

A. I guess——

MR. HAMILL: I object.

THE COURT: Let him answer.

MR. HAMILL: I object. He cannot answer that. He must take each actual situation as presented to him and pass upon it. Now, this is not helpful to the Court, asking a policeman to tell what he might do under a certain set of circumstances. He might run up to the law department, and he doesn't know what he would do.

MR. FRAZER: Might I call the Court's attention to the fact that two counsel are now defending one witness.

MR. HAMILL: And three, when you talk.

MR. ERNST: If your Honor please, we must continue this line of inquiry, because this man is operating under an ordinance that gives him discretion, and we must have the right to determine the use of discretion in relation to applications and other material; and my question is, is there any possible situation where you would deny an application for Senator Borah to speak in Jersey City?

A. I told you, Senator Borah making an application under an organization not his own personal application, I would handle it the same as I would any other application from any other organization.

Q. Now does that mean——

A. And I would express my opinion after I received that application.

Q. Does that mean that there are certain organizations whose applications, no matter who the speakers——

A. It don't make a bit of difference.

Q. (Continuing.) —are denied?

A. What is that?

Q. If you will please let me finish my question.

A. I am trying to.

Q. It will take days this way, Commissioner.

A. All right.

Q. Does that mean that there are certain organizations whose applications for permits for speakers would be denied irrespective of the speakers?

A. Applications of organizations where they are apt to cause disturbance, bloodshed, riots and maybe murder, would be denied.

Q. I am going to ask my question again: Are there any organizations whose applications for permits for speakers would be denied, irrespective of the speakers? Will you try again to answer that?

A. Now what is that again?

Q. I will give it again.

A. Yes.

Q. Are there any organizations that you know of whose applications for permits for speakers would be denied irrespective of the speakers for whom the permits are asked?

A. I have denied them already.

Q. Now what are the organizations?

A. I guess you have the applications there.

Q. Well, now——

A. You have the applications. If you will let me see them, they will refresh my memory.

Q. All right. Will they be here? Two of them are here, aren't they?

A. I don't know anything about those two; I told you if they are denied they are marked up there "denied."

Q. Do you know of any applications denied other than the CIO and the National Civil Liberties Union? Here is the file. Will you look through and see if you can find another one?

MR. HERSHENSTEIN: That does not show it. You would have to refer to your other file, Mr. Ernst.

MR. ERNST: What? Will I? (Another file handed to the witness.)

THE COURT: I can give you one, because it is in a reported case; The American League for Friends of New Germany, of Hudson County. That was not for a public meeting; that was for a private meeting.

MR. HERSHENSTEIN: May I have this?

MR. ERNST: These are my papers.

MR. HERSHENSTEIN: May I have that?

MR. ERNST: I will hand them to you, Mr. Hershenstein.

MR. HERSHENSTEIN: All right.

THE COURT: You object to my citing things, Mr. Hamill, so I don't know whether I should cite this case to you or not. I will anyhow; 116 New Jersey Equity, page 487.

MR. HAMILL: I am only going to call your Honor's attention to the fact that the Court takes judicial notice of these things, and your Honor doesn't have to put them down on the record.

THE COURT: You won it.

MR. HAMILL: Your Honor is familiar with them.

THE COURT: You won it.

MR. ERNST: If your Honor please, while the witness is looking over the papers, may I indicate that the files

as now presented do not contain all of the documents. There is another bag which is the second bag that I referred to, which contains the so-called letters of protest, of which our representative indicated that there were one hundred approximately, all told. I would like to have in court as soon as possible the other file. I have just gone through this and find that these are not all the papers, even so testified to.

MR. HAMILL: Mr. Ernst, how do you know that? Did you examine the——

MR. ERNST: Mr. Britchie, of our office, of the Civil Liberties Union, a lawyer, went over there. He dictated a report, which indicated that he examined and saw the protests, and Mr. Glavin with him indicated that there were some protests, and that they did not number more than one hundred all told, in the entire files of the office.

MR. HAMILL: Is Mr. Britchie here?

MR. ERNST: Mr. Britchie is not here. I ask that the subpœna be lived up to. Let's stop this nonsense of Mr. Britchie.

MR. HAMILL: Well, I didn't bring in Mr. Britchie. He is evidently an important gentleman, because you quoted him very much at length.

MR. ERNST: I tried——

MR. HAMILL: And I wanted to know if we could have the benefit of his information obtained at first hand instead of your hearsay recital of it.

MR. ERNST: If your Honor please, I tried to accommodate Mr. Hamill on the theory that there were a lot of papers, and it would result in inconvenience to the office. I feel that I have been deceived——

MR. HAMILL: You did not try to accommodate me. You tried to get them and I objected and the Court

determined how the information should be gotten. Now let us start off correctly.

MR. ERNST: From my point of view it was an accommodation, because I stand on my legal rights under the subpœna.

MR. HAMILL: I distinctly——

MR. ERNST: I now ask that the subpœna be enforced. There is an envelope of so-called protests. We must have them. We intend to tie them up, not only with this witness as to inspiration, but on the evidence of discrimination.

THE COURT: Has it disappeared?

MR. ERNST: It is not in court. They handed me bags purporting to be all the papers.

THE COURT: What is the other one? What is the other one?

THE WITNESS: The other one is not here, your Honor.

MR. ERNST: I have all the papers they handed me.

THE WITNESS: I wasnt there, if I can explain.

THE COURT: Yes.

THE WITNESS: When this gentleman come to my office yesterday, I was very busy, and I done everything I could for him; turned them over to Judge Glavin and my secretary, Lieutenant Daly. I instructed them to give that gentleman anything he wanted to take a copy of. He looked at the applications of denial and he told them, the way I understood it, I might be wrong, that he didn't want them; if they had wanted them here, I would have brought them here this morning.

MR. ERNST: Then, if your Honor please, there is no dispute between the witness and myself. Will you kindly ask to have them sent?

THE COURT: Will you have them brought over then?

THE WITNESS: Why, certainly.

MR. ERNST: Will somebody telephone for them right away, because they tie up with all the rest of the examination?

(Mr. Hershenstein spoke aside to an associate.)

MR. ERNST: Let's have them all this time, so we won't have to go back again.

THE COURT: Will they know where they are?

THE WITNESS: Yes; they are just the protests that come to my office. There is barrels of protests——

MR. ERNST: May I just save time, before you go to telephone; do I understand that now a message is being sent over to bring over the papers of protest and all other documents relating to applications?

MR. HAMILL: Suppose you write it out on a sheet of paper.

MR. ERNST: I have just dictated it.

MR. HAMILL: I know, but how——

MR. ERNST: The protests and all other documents relating to permits for outdoor meetings. It seems to me very simple. You can take a copy of the——

MR. HAMILL: All right. You convey that message. I hope you don't forget it on the way over. It is very simple. I suppose you won't.

Q. Now, Commissioner, will you continue to look through——

THE WITNESS: I would like to ask his Honor a question, if you have no objection.

MR. ERNST: Not at all.

THE COURT: Go ahead, go ahead.

THE WITNESS: There is protests in my office; I know that there is protests in the Mayor's office; I think you had better get them all while you are about it and bring them all here. There is not a hundred but there are hundreds of them, to the best of my recollection.

THE COURT: Well, if you will tell us where they are, we will get them. Has that gentleman gone?

MR. HAMILL: He has gone.

MR. ERNST: I would like them all, your Honor.

MR. HAMILL: Shall I call him back, your Honor?

MR. ERNST: Yes, please.

THE COURT: Yes, get them all.

MR. ERNST: I would like them all; every one of them.

MR. HAMILL: All right; I will take care of it myself.

MR. ERNST: He is our witness, and we want to use them

Q. Now, Commissioner, will you continue to look through——

A. Here they are, I think, to the best of my recollection.

Q. These papers that you indicate are the denials of permits to organizations?

A. I think so.

Q. Is that right?

MR. ERNST: Without encumbering the record, may I just read these with you——

THE WITNESS: Yes.

MR. ERNST: —rather than marking them all?

One of them is an application of Jeff Burkitt and Vincent——

THE WITNESS: Vincent Finoy.

MR. ERNST: Finoy, dated April 12, 1938, for a meeting on April 16th.

THE WITNESS: Yes, sir.

Q. That was denied?

A. Yes, sir.

Q. Here is another application for Jeff Burkitt, April 19, 1938, denied on April 22d.

A. Right.

Q. Both denied on the basis of possible disorder?

A. That is it.

Q. Here is an application of the Independent Speakers Association, 2 Lafayette Street, New York City, dated May 9, 1938, indicating that this organization has on its speaking platform such prominent citizens as Thomas E. Dewey, Fiorella LaGuardia, Newbold Morris, Joseph E. McGoldrick, and others, of equal renown. "Most of the members," the application says, "in our organization are independent Democrats and independent Republicans. We are not affiliated with any political parties."

They wanted the application for the purpose of discussing freedom of speech as guaranteed by the Constitution, and they asked for the permit for May 19th, or May 20th; that was denied in a letter dated May 10th?

A. Yes, sir, for the same reason.

Q. For the same reason. An application of Socialist Labor Party. That is a political party?

(The witness nodded.)

Q. Is that a political party?

A. It is, yes.

Q. It is. Application May 23d, 1938, indicated that verbal applications had been made for various addresses.

This written application was denied by you—no, I will withdraw that. On May 4, 1938 you addressed a letter to Nicol Gerold, who I take it is connected with the Socialist Labor Party——

A. Yes, sir.

Q. Asking him to indicate the list of speakers who are to address the meeting. You also wanted to have a list of the officers of this Socialist Labor Party, and you wanted to have the application presented in person, is that right?

A. Yes, sir; if it is in there, it is right.

MR. HERSHENSTEIN: Please complete it. So that he may investigate the same.

Q. So that you may investigate the same.

And that meant that your investigation would be aided by knowing the names of the speakers and the lists of the officers?

A. Yes, sir.

Q. And that permit was denied on April 27th?

A. Yes, sir.

Q. Here is an application of the Hudson County Committee for Labor Defense and Civil Rights—I will withdraw that.

MR. HERSHENSTEIN: If your Honor please, just a minute, Mr. Ernst. I think that is an oversight, but annexed to this application of the Socialist Labor Party in which Commissioner Casey requested the names of the officers of the association and the speakers and desired investigation, he then said it was denied on April 27th. April 27th is the denial of a different permit entirely. I think it is attached through error. May the record show——

MR. ERNST: I would like the record to indicate that the file was jumbled and attached in error, and I now ask the Commissioner what happened to this application of the Socialist Labor party?

MR. HERSHENSTEIN: Did you get a reply to this, Commissioner?

THE WITNESS: I don't remember.

Q. You don't know what happened to this application?

A. No, I don't. That application, I don't know whether there was a reply to my letter or not.

Q. See if we can simplify this one.

A. What is that, in reference to this one? I think it is in here.

MR. ERNST: Your Honor please, I want to correct the record as to the application of the Socialist Labor Party meeting previously referred to, as I now find elsewhere in the papers what purports to be the denial of the right of the Socialist Labor Party to hold open air meetings May 14th and May 21st at Lincoln and Central Avenue and Orient and Jackson Avenue.

MR. HERSHENSTEIN: Wait a minute, I don't think that is a denial; that is not a denial. Read it. That is a reply evidently to the request of May 4th asking for further information. Evidently that was written in compliance with the request for information.

MR. ERNST: No, I have two letters dated May 4, 1938, both addressed to Nicol Gerold. As I read these letters, they are identical in wording but these two copies of letters do not conform.

Q. Will you explain whether you wrote two letters to this man or whether these copies were made at different times and how it is that two carbon copies do not happen to come out the same typographically?

MR. HERSHENSTEIN: They are identical, aren't they?

MR. ERNST: They are not identical at all.

MR. HERSHENSTEIN: I mean the language is identical.

MR. ERNST: The language is identical, the words are identical.

A. I can explain why that is; it is an extra copy and it must have been run off as an extra copy.

Q. Later?

A. Later, before the letter went out.

Q. Now, did you receive an application from William Kane Tolman of the Socialist Party for street forum on April 30, 1938?

A. Do you mind letting me see that?

MR. HERSHENSTEIN: The question is, pardon me, did you receive an application from Mr. Tolman. What is your answer to that?

THE WITNESS: On when?

Q. First I want to know if you received it and then if you will read the date into the record.

A. I received one here, I guess there is another letter there; this is mixed up on this here.

MR. HERSHENSTEIN: I think we can admit for the record, Mr. Ernst, that an application was made. We don't find the original application.

Q. And can you give me the approximate date of the application?

MR. HERSHENSTEIN: It would be prior to around April 27, 1938.

THE WITNESS: Around 10 P. M. April the 22d.

Q. April 22,

A. I think that is what it is.

Q. And what is the date of the denial of the meeting for the Socialist Party which was made around April 22 that you have in the letter?

A. Well, he asked for to hold this date of April the 30th; it is right here.

Q. No, I didn't ask the date when he wanted to hold the meeting, I asked the date of your denial. Will you read that into the record?

A. I denied it on the 27th.

Q. Now, the Socialist Party of Hudson County asked for a permit around May 17, 1938.

A. Yes, sir.

Q. What happened to that application?

A. Denied.

Q. On what date?

A. May the 10th.

Q. Now, I ask you whether you received an application from the Catholic Worker dated May 3, 1938, to speak on Friday, May 6th, indicating that if there was any objection to the choice of the place the place could be changed, and asking for the right to speak on May 14th, indicating that the meetings will be educational explaining the Papal Encyclicals. Is it a fact that that application was received?

A. Yes, sir.

MR. ERNST: I would like to offer in evidence the application in writing, telegraphic, signed by William N. Callahan, Managing Editor of the Catholic Worker.

(Received and marked Exhibit P-17.)

Q. I ask you, Mr. Casey, to look at the only correspondence I can find in your files on the subject and tell me what happened to that application?

A. Do you want me to read it?

Q. No, I don't want you to read anything; I want you to tell me what happened after that application came in.

A. I don't think that I received any other communication from him; if I did it is in the files there.

Q. Let us take it simply: Did you read the application when it came in?

A. I did.

Q. Did you communicate with the applicant, the Catholic Worker in regard to the application?

A. I sent a letter to William Callahan of the Catholic Worker.

Q. Now, the letter in effect indicates that you want the applicant to come in in person, you want him to list those who will address the meeting, also to supply you with a list, if any, of the officers or executives of the newspaper that you say you edit so that you may investigate, is that right?

A. Right.

Q. Now, what happened after that?

A. That's the last I heard about it to the best of my recollection.

Q. What's that?

A. That's the last I heard about it to the best of my recollection.

Q. You don't know whether or not—careful on this—whether or not Mr. Callahan of the Daily Worker came into your office in response to your request?

A. If he did he didn't see me.

Q. And if he did it was never reported to you?

A. I didn't hear a thing about it.

Q. Will you describe very briefly the appearance of your secretary, is he a tall man or a short man?

A. My secretary is a man six feet tall.

Q. That's enough, that identifies him. You don't need to waste time in the record.

Now, as a matter of fact you neither denied nor granted the permit of the Catholic Worker, is that right?

A. Offhand I couldn't say; I might have denied it but I got no copy of it.

Q. If you denied it would there not have been a letter in the file?

A. I should have a letter in the file, yes, sir.

Q. In other words, your denials are invariably in writing, aren't they?

A. Mostly, sometimes they are verbal.

Q. Sometimes they are verbal. Will you name me one in your entire history that has been verbal, just one. I don't want a lot of them, just one, to give me the type.

A. I can't remember.

Q. Well, are you really sure that you ever denied one verbally?

MR. HERSHENSTEIN: Do you mean ever or in this case?

Q. Ever. I am giving him carte blanche to name one out of hundreds. Do you remember a single one?

A. No, I don't remember.

Q. Now, are you sure?

A. I am not certain, I won't be certain on anything that I don't think is right. If I am certain of something I will say I am certain, but if I am not I won't say it.

Q. That's right and that is why I want you to be very certain before you say that you denied permits verbally. I want you to be very sure because you want to be right.

Now, are you still sure that you denied permits verbally?

A. I told you that I don't remember, I might have.

Q. You might have. Now, on this Catholic Worker application did you have any information or evidence upon which you would either grant or deny that application?

A. On circulars.

Q. I am not talking about circulars, I am talking of that application.

A. What's that?

Q. I am talking of this particular application.

A. I am talking about that application. They were handing out circulars which I had seen one before that application was made.

Q. And that might have been a factor in your denying the permit?

A. It might have, yes. I couldn't tell you offhand.

MR. HERSHENSTEIN: Of course, the witness doesn't remember that he denied it.

A. I didn't say I denied it.

Q. I didn't say you did either. I said it might have been a factor in the denial.

A. It might have been if I did deny it. I don't think that I received any more communications from the gentleman.

Q. All right. I show you application Hudson County Committee for Labor Defense and Civil Rights and ask you whether or not this application wasn't made for a permit to hold a meeting at Pershing Field Friday, May 27, the sponsor to be Representative O'Connell.

A. Yes, sir, that was.

Q. And the application indicated that Pershing Field was chosen as a place "which will not interfere with the trade of our townspeople." It further went on to say it was an organization composed of Hudson County groups, solicitous of the business and welfare of Jersey City. Right?

A. Right.

Q. What happened to that application?

A. My answer is there I denied it on the same grounds, disorders and riots.

Q. Now, in addition to denying the permit you went on and wrote a letter saying that these applicants could not be very solicitous about the business and welfare of Jersey City, is that right?

A. Yes, sir, if it is there I said it.

Q. Is it there?

A. It is.

MR. HERSHENSTEIN: Don't you want to read any more of it?

MR. ERNST: No, you can read all you want.

MR. HERSHENSTEIN: I thought you might want to.

MR. ERNST: All I want to get in——

MR. HERSHENSTEIN: I understand.

MR. ERNST: You can read it all, perfectly happy to have you do so.

Q. There was an application from Congressman O'Connell personally to Mayor Hague under date of approximately May 9th, is that right, the application being in telegram form?

A. Yes, sir, that is my answer.

Q. And the answer in effect is a denial of the meeting?

A. Yes, sir.

Q. On the ground that it might create a disturbance?

A. Yes, sir.

Q. And you stated that the reason for your conclusion was that protests had come into you?

A. Yes, sir.

Q. From various veteran and labor and War Mother and Gold Star Mother and other organizations?

A. Yes, sir.

Q. Now, there is an application here from Hudson County Committee for Labor Defense and Civil Rights dated May 5 asking for a permit for a meeting on May 7 at which Congressman Bernard and Congressman O'Connell will speak; I take it that was also denied?

A. Yes, sir, it was, for the same reason.

Q. Now, Commissioner, I want to come back and ask you again: You have approximately nine hundred men on the police force.

A. Around that.

Q. Approximately how many men do you think would be required to keep order in the event that Senator William E. Borah were granted permit to speak under the auspices of the debating society of Princeton College, could you do it with nine hundred men or two hundred or would you need more?

Mr. Hamill: I object. How could he possibly answer that question, how many men would be required to keep order in case a certain person wanted to speak? Now, wouldn't it depend on the situation?

The Court: It seems to me that it is at least one of the principal issues, isn't it?

MR. HAMILL: Whether it is or not, is there any police officer in the United States who can say how many policemen would be required to keep order in case Mr. A. Smith spoke under the auspices of Society B, wouldn't it depend upon the circumstances existing at the time?

MR. ERNST: Your Honor please, I will make my question specific.

MR. HAMILL: If it were in the middle of the night and no one were around he wouldn't need any.

THE COURT: It should be more specific, I think.

Q. I thought I had made it specific when I referred to the specific application.

MR. HAMILL: No.

Q. But now I want to ask you, assuming that the application of the debating society of the Princeton boys had been granted and William E. Borah were permitted to speak, you having turned down the application on the fear of disorder, how many police do you think would have been needed to keep order?

MR. HAMILL: I object. How does he know? That assumes that he would know the importance of the Princeton Society and who they were and in an intimate way.

THE COURT: As I understood it, his reason for denying this application was not on the ground of the society; your real reason was that you didn't know he was going to speak, is that it? I mean that letter.

THE WITNESS: I saw in the paper where he wasn't coming.

MR. HAMILL: He wouldn't know ff it were a Harvard society.

MR. ERNST: Your Honor please, we have the typewritten record of the official in charge of the administration of the ordinance showing that that application of the Princeton Debating Society was denied because there might be disorder.

THE COURT: I understand you don't stand on that.

MR. ERNST: He cannot stand on any other, your Honor.

MR. HAMILL: And your Honor please, he wants the Court to draw the conclusion that because it is a Princeton society and because it is a certain speaker there couldn't possibly be any disorder.

MR. ERNST: Oh, no.

MR. HAMILL: That is absurd.

MR. ERNST: Oh, no your Honor, that is not my intention.

THE COURT: He is taking a different position now, Mr. Hamill.

MR. ERNST: I will tell you my position, your Honor. It seems to me if the ordinance is constitutional it is the duty of a human being to determine in each and every instance of an application whether or not there will be a disturbance. Whether or not there will be a disturbance must depend on many factors. This witness has testified that there is in effect only one factor—I have had him three times in the record of last week and the factor is: will there be a disturbance gaged by the protests as he derives them from his common sense and the newspapers and resolutions? Now, let us assume that he got three protests against the Whig Society with Senator Borah speaking, obviously he wouldn't listen to three puny protestants, he would

send maybe one policeman out to handle the three men, and in each case, under his own theory, he must determine whether or not the protest is so big that he couldn't keep order. He is not denying the permit because there may be disorder, he is denying the permit because he is incapable of keeping order. That is his only theory.

MR. HAMILL: No, your Honor please.

MR. ERNST: I asked my question——

THE COURT: As I understood, Commissioner, I don't think your letter that you sent out in the case of this Princeton society was your real reason, was it?

THE WITNESS: My reason stated in my letter, your Honor——

THE COURT: Because you didn't really think there would be a riot if the Princeton boys came to town, did you?

THE WITNESS: Well, I have had other college boys cause plenty of disturbance, very much disturbance. I will stand on that letter that I sent to the president of that society.

MR. ERNST: Now——

THE WITNESS: And my reasons for it, if you want to know them——

Q. No, I don't want to know them. Your counsel can ask them.

Now, I want to ask you: You came to the conclusion there would be a disturbance?

A. Yes, sir.

Q. If Senator Borah spoke?

A. Not if Senator Borah spoke.

Q. Well, will you let me finish. If he spoke under the auspices of the debating society?

A. All right, go ahead.

Q. If you will not interrupt me you will understand me maybe.

A. I am trying to.

Q. I asked you just a simple question. You came to the conclusion there would be a disturbance if Senator Borah spoke under the auspices of that debating society, is that right?

A. It is not.

Q. You came to the conclusion that you had to deny the permit because there might be a disturbance?

A. That's it.

MR. HERSHENSTEIN: Just a minute. I think, your Honor please, what this witness might do is not evidential in this case without all the facts and circumstances being investigated.

MR. ERNST: I am not asking him "might," I am just asking him, did he deny the permit to Senator Borah to speak under the auspices of the Whig Society because he was afraid there would be such disorder that he couldn't cope with it?

MR. HERSHENSTEIN: He didn't say that; he said——

MR. ERNST: I didn't ask him what he said. If you will just save it for cross-examination or take an exception, just try a lawsuit.

MR. HERSHENSTEIN: We are trying a lawsuit.

MR. ERNST: Will you please make an objection and take an exception. You can ask all the questions you want, you can have him for a week.

MR. HERSHENSTEIN: I hope not.

Q. I asked you——

THE COURT: So do I.

MR. HAMILL: I hope you two gentlemen will settle the procedure between you.

MR. ERNST: I am asking a question; if you will stop interrupting with speeches and make formal objections as a court of law should require we will go places.

THE COURT: All right. Is there a question?

Q. The question is, did you not deny the right of Senator Borah to speak under the auspices of the Princeton Debating Society because you were afraid there would be disturbance?

MR. HERSHENSTEIN: There are two questions there.

MR. HAMILL: I object; it contains an assumption of fact which is not in the evidence. Now get that question: did you deny a permit for a meeting because Senator Borah was to speak?

MR. ERNST: I didn't say because.

MR. HAMILL: Under the auspices of the Princeton society; there is nothing in the evidence to show that Senator Borah was to speak. He told us that Borah withdrew, so therefore it contains an assumption of fact which is not in the case.

THE COURT: Mr. Hamill, I asked Mr. Casey if his real reason for refusing this permit was that he didn't think Senator Borah was going to speak. I thought he said that it was. Now he says that isn't so.

MR. ERNST: He says he stands on the record, he said it three or four times. May I frame the question again so that Mr. Hamill and nobody will misunderstand it?

Q. Did you make an investigation of the facts in regard to the application of the Princeton Whig Cliosophic Society

permit for to hold an outdoor meeting with Senator Borah as speaker, make an investigation?

A. I received the correspondence, yes.

Q. I didn't ask you that at all.

A. I didn't investigate it, no.

Q. You didn't? Now, may I refresh your recollection because you want to be right and I take it that you wrote in a letter that you had made an investigation. Let's get that clear?

A. Yes, that's what I say.

Q. Do you want to change your testimony now to indicate that you made an investigation?

A. Well, the investigation was what I saw in the papers, I think, if I remember correctly.

Q. All right. But you made an investigation?

A. I saw it in the papers.

Q. I didn't ask you what it was, we will find that out later. Now, then, you denied the permit of the Whig Society to have Senator Borah a speaker in Jersey City?

A. I did.

Q. You did; and you did it on the ground that the meeting, that such meeting of Borah's speaking under such auspices, would tend to create disturbance and disorderly assemblage, is that right?

A. Well——

Q. I show you a letter——

A. That is right.

Q. —to refresh your recollection?

A. That is right.

Q. It is right?

A. Just a minute. Let me explain it, please.

Q. Well, I will ask you the next question.

A. Well, now, just a minute. Let me explain it.

Q. I earlier asked you if you denied it on that ground and you said yes.

A. I think you are very technical about it. I am entitled to make an explanation.

Q. I am very technical.

A. No doubt about it.

Q. I am very technical with you, sir; very. Now, let's go further. You denied it on the ground that there might be a disturbance?

A. Yes, sir.

Q. Did you mean thereby that you did not have adequate police force to prevent disturbances at such meetings?

A. Disturbances are a funny thing to prejudge.

Q. I just asked that question. May I just interrupt——

A. Let me explain it, please?

Q. No, no.

A. I can explain it.

Q. You can't answer my question?

A. I have got to explain it.

Q. You can't answer my question?

A. I can't answer it without an explanation.

Q. All right.

A. The situation, the way it presents itself to a policeman.

Q. I am trying——

A. Just a minute.

MR. ERNST: No, if your Honor please.

THE WITNESS: I think, your Honor, I am entitled to explain it.

MR. HAMILL: I ask that the witness be permitted to complete his answer.

THE COURT: Go ahead.

A. Different positions that confront a chief of police, he has got to govern himself accordingly.

Q. All right.

A. Twenty-five men can handle a crowd maybe of ten thousand people; a thousand men can't control a mob of five thousand unruly people, of two thousand unruly people. And what is happening all over the country today proves that. You are well aware of that fact.

Q. No, I am not, sir.

A. Yes, you are; just the same as anybody else.

Q. Mr. Casey, do you know about all over the country instances, as a cop and police officer, you have been called that——

A. I said a police officer.

Q. (Continuing.)—of violence, in New York City, at Columbus Circle or Union Square?

A. Do I remember? Certainly.

Q. Yes, do you know of any? You referred to all over the country.

A. Yes.

Q. When?

A. I know there has been plenty of disturbances in New York City.

Q. I asked you if you knew of any instance of police meeting to protect a meeting at Union Square or Columbus Circle in New York City? Do you know of a single one?

A. Yes, there have been.

Q. What?

A. There have been. I cannot give you the date now.

Q. You are sure there have been?

A. Certainly.

Q. Yes?

A. I can prove it.

Q. All right. Now you said that under certain circumstances a few police could handle a crowd?

A. Yes.

Q. And under others it took a lot of police?

A. Certainly.

Q. That is right, I agree. Now when you denied the application of the Princeton Debating Society, do I understand that that meant that you thought it was one of those situations where it would take many police?

A. It certainly would. I don't know how a crowd feels. I can't judge a crowd no more than you can.

Q. That is right. And although you cannot judge a crowd, you judged sufficiently to deny the right of Senator

Borah under these auspices to speak, because there might be an unruly crowd?

A. That is it.

Q. You have the power to call on the governor of the state for additional force and power under certain circumstances, haven't you?

A. I have, but I don't believe in calling him without my knowing that beforehand, and I get positive proof. It is up to me as head of the police department to protect the lives and property. The only time I would call for it would be for an unruly crowd when it got out of our hands, that we couldn't cope with it.

Q. So that in effect, whenever the mob, using the word that you used in evidence the other day, becomes so threatening in respect to a particular proposed meeting, you feel it is your duty for the good of the city to deny the permit?

A. Yes, sir, to protect life and property.

Q. That is right. Now, let's just get back here. Mr. Casey, the other day when you were on the witness stand, in answer to a question as to particular speeches, you said in part, page 566, "It wasn't what they would preach, but how the mob that went there would take it."

A. Yes, sir.

Q. Do you stand by that position?

A. I certainly do.

Q. Now, let me ask you, if you see a mob in formation, do you ever warn the mob to behave itself? Have you ever done that?

A. Not as the chief—I am not the chief of police; that is the duty of the chief of police, to do that. I am the Director of Public Safety. I have got both the police and fire department under my jurisdiction.

Q. Now, the chief of police is under your jurisdiction?

A. He is.

Q. And you just testified that it is his duty?

A. It is his duty.

Q. To warn people who threaten——

A. It is his duty to——

Q. To do what?

A. It is his duty to protect life and property. (Laughter at counsel table.).

A. (Continuing.) What's funny about that? Anything?

Q. Let's get down from the skies——

A. I am right down.

Q. —and get down to what I asked you. Is it his duty to try to forestall and prevent a mob developing in Jersey City?

A. Certainly it is his duty.

Q. Isn't it his duty to warn a mob that they should behave themselves?

A. It is his duty, yes.

Q. All right. And you would say that if he aided and abetted and fomented the mob, he would be derelict in his duty?

A. Oh, that is ridiculous.

MR. HERSHENSTEIN: I object to that. Wait a minute. That is an expression that is not relevant or material.

MR. ERNST: Oh,——

THE COURT: Commissioner Casey would undoubtedly say yes, of course if he fomented a mob, he would be derelict in his duty.

Q. Wouldn't he be derelict in his duty if he fomented a mob and aided them?

A. Aided them; certainly he would.

Q. Sure.

A. There is no doubt about it. There is no police officer aiding mobs.

Q. Now in order to put down a mob, the authorities in Jersey City, and you in particular, have a legal power to call on the armed forces of the state, is that right, you have the power to do it?

A. That is right.

Q. And you also—the state, as you know, also has the power to call on the armed forces of the United States?

A. That is right.

Q. Is that right? Have you ever called on the state or the national power to aid you?

A. I have not.

Q. Just a minute, let me finish. Have you ever called on the state or national powers to aid you when you were of the opinion that a mob might interfere with the public peace?

A. I have not. We have always been able to cope with the situation as it presented itself.

Q. Just one question I want to ask you that I overlooked: Did you in connection with the Catholic Worker application come to the conclusion from the investigation as far as you carried it, that the subject matter of the speeches that were wanted to be made by the Catholic Worker might create disorder? You will recall the speech, the subject of the speech; the discussion of Papal Encyclical. You didn't come to the conclusion that that would create disturbance?

A. No.

Q. Did you come to the conclusion that the speakers themselves would create disturbance?

A. What they might say would cause disturbance.

Q. That is right. And so in advance of what they or other speakers might say you have to come to the conclusion as to whether their words might create what you call mob disorder?

A. Yes.

Q. Is that right?

THE COURT: Mr. Ernst, the stenographers have asked us to take a ten-minute recess at twelve o'clock and at three o'clock. So we will take a ten-minute recess at this time.

(At this point a short recess was taken.)

Q. If you believe that disorder will happen through mob, at one of these outdoor meetings, do I understand you

to indicate that you are unable to tell in advance whether the disturbance will be very big or mild?

A. You have to wait until the occasion presents itself.

Q. On the occasions of the denials of permits which have already been referred to this morning——

A. Yes, sir.

Q. —do I understand that in each one of those cases you thought there would be disturbance?

A. I did.

Q. And in each one of those cases you did not know whether the disturbance would be very large or very little, but in any event you thought it was so large that you couldn't control it?

A. No, I didn't, either.

Q. What did you think in respect to it?

A. I wanted to prevent it before it started.

Q. And so, Mr. Casey, you thought that there would be some disturbance that you wanted to prevent?

A. I did, if I refused it, yes.

Q. Yes, I am only talking about the refusals.

A. Yes, sir.

Q. And so wherever you refused it you had in mind that there would be some disturbance, is that right?

A. Well, there was liable to be.

Q. Liable?

A. Liable to be.

Q. And whether the disturbance would be of a vast nature or of a minor nature, you couldn't guess accurately, could you?

A. I couldn't, and nobody else could.

Q. Nobody else could. And so if you came to the conclusion that there would be disturbance you would deny the permit for the safety of the community?

A. For the safety, that is right, I would refuse a permit where in my judgment I thought that disturbances, riots, violence, bloodshed and murder might happen.

Q. Irrespective of whether you thought that your police could control the mob or not?

A. I think I explained to you about mobs or crowds. It is hard to tell how they are going to act. I have acted to the best of my judgment.

Q. That is right. And you cannot in advance of such a meeting know whether the mob will be controllable or not?

A. No one could, no.

MR. HAMILL: I object.

THE COURT: He has already answered that he couldn't.

MR. HAMILL: For this reason——

THE COURT: He said no one could, Mr. Hamill. He has already answered it.

MR. ERNST: I am just trying to get his answer——

MR. HAMILL: Well I object to any further questions as to whether or not the mob could be controlled. The ordinance distinctly says for the purpose of preventing riots, disturbances or disorderly assemblage. There seems to be a great misconception in the mind of examining counsel. He seems to think that if the riot, disturbance or disorderly assemblage is such as the police can put down, that then the director must not refuse the permit. Indeed he went so far as to say "couldn't you call on the Governor?" The statute imposes on the public officer, the director, the duty of putting down the riot, of putting it down if he believes a riot, disturbance, or disorderly assemblage will arise, whether he can put it down or not.

MR. ERNST: If your Honor please——

MR. HAMILL: It is for the purpose of preventing a thing rising, not something that he could control, but whether he could control it or not it is for the purpose; and then this statement, "Couldn't you call on the Governor"? If the Governor sent the militia to help him, would here be any use of them holding a meeting?

Would the situation be such a situation where anyone could speak?

MR. ERNST: If your Honor please, I am perfectly willing and content to take Mr Hamill's statement, if Mr. Casey will make it his. Mr. Casey is on the stand.

Q. Have you heard Mr. Hamill's statement about your duties under that statute and do you agree with it? Do you want it read?

A. I always agree with my counsel.

Q. Always do. And you make that then your position in the matter?

A. Certainly.

THE COURT: Lot's of people don't.

THE WITNESS: Well, I agree with him.

Q. All right.

A. I am in the hands of my counsel, I think.

MR. HAMILL: For the purpose of preventing it.

Q. Now, Commissioner, I ask that if the purpose is to prevent disturbance, do you not have to deny every permit where you get numbers of complaints and protests, irrespective of whether you think the mob will be substantial or not, on Mr. Hamill's statement?

MR. HAMILL: I didn't say whether the mob would be substantial; irrespective of whether you prevent—if no riot, disturbance, or disorderly assemblage is going to arise, of course he cannot deny the permit. The ordinance does not give him the right capriciously or arbitrarily to deny permits. That is admitted. He can only —"provided that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage." There isn't any doubt of that.

Q. Will you answer my question, Mr. Casey?

A. What is that.

Q. Do you want the stenographer to read it?

A. Yes, please, if you don't mind.

(Pending question read by the reporter.)

A. When the occasion presents itself, then I handle it to the best of my judgment.

Q. Now that means that if you read the protests that come in for a particular meeting, you then make up your mind on reading the protests whether or not there will be a disturbance?

A. Well, it is according to who makes the application and whether to my best judgment I think we are liable to have violence and I deny the permit.

Q. Now one of the bases for your conclusion in your mind as to disturbance is the protests you may receive, isn't it?

A. Yes.

Q. That is one of the bases. Now I ask you if you receive for any meeting a substantial number of protests, do you not then deny the permit on the ground that if a substantial number of people protest there may be a disturbance?

A. I use my own sound judgment on it when the case presents itself.

Q. Now, your judgment as to what, Commissioner? There are two things——

A. As to what the complaints are, what the meeting is and what is liable to develop out of it.

Q. That's right. Now, you are not concerned with whether or not the disturbance will be controllable or not, that doesn't bother you?

A. Why, certainly it does, by all means; why not?

Mr. Ernst: If your Honor please, I will have to have Mr. Hamill's statement read to the witness. Will you read back Mr. Hamill's statement? As I recall it, he said the statute had no relation to whether or not the disturbance could be controlled or not. Now, let

us read the statement without more speeches. I ask that the statement be read.

MR. HAMILL: Oh, I hope you will take that admonition to yourself.

THE COURT: Mr. Heironimus, the other reporter, has gone out.

MR. HAMILL: Do you want me to make it again, if it will help you?

MR. ERNST: Oh, yes, I am willing. Go ahead.

MR. HAMILL: Thanks for your graciousness, as the eagle said when they handed him a grasshopper.

The ordinance distinctly says first of all that the application shall be made at least three days before the meeting; that then he is to conduct an investigation. The protests are part of the investigation. He may get telephone calls, he may get oral information. He is to examine all the circumstances and then he is under a duty to refuse it if he belives it to be proper to refuse the issuance provided that the permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage. That is the wording of the ordinance.

MR. ERNST: Mr. Hamill now has merely read the ordinance.

MR. HAMILL: All right, I shall go further.

MR. ERNST: I would like to say—now, here is the stenographer, let's get it.

MR. HAMILL: Do you want me to add that further statement?

MR. ERNST: No, we will take it from the stenographer.

MR. HAMILL: I can give it later.

MR. ERNST: You can give it later when you take the stand. Let's have Mr. Hamill's statement.

(The reporter read as follows):

"MR. ERNST: I am just trying to get his answer.

"MR. HAMILL: Well, I object to any further questions as to whether or not the mob could be controlled. The ordinance——"

MR. ERNST: Wait a moment, let me interrupt a moment.

Q. Mr. Casey, do you recall that sentence?
A. What's that?

MR. ERNST: Let's read it again. I want you to peg this in your mind, this sentence of Mr. Hamill's, and I asked if you agreed with it.

(The reporter read as follows):

"I object to any further questions as to whether the mob can be controlled. The ordinance distinctly says for the purpose of preventing riots, disturbances or disorderly assemblage. There seems to be a great misconception in the mind of examining counsel. He seems to thing that if the riot, disturbance or disorderly assemblage is such as the police can put down, that then the Director must not refuse the permit. Indeed, he went so far as to say 'couldn't you call on the Governor?' The statute imposes on the public officer, the Director, the duty of putting down the riot, of putting it down if he believes a riot, disturbance or disorderly assemblage will arise, whether he can put it down or not; it is for the purpose of preventing a thing rising, not something that he could control but whether he could control it or not it is for the purpose."

And then this statement.

MR. ERNST: All right, that's all. Just stay here one moment, Mr. Stenographer.

Q. Do you accept as your statement the following, which is a paraphrase of Mr. Hamill's thought, whether or not a particular meeting can be controlled is not the test because you deny, in order to prevent a situation arising where you have to try to control the mob; do you agree to that?

A. Now, some of it I don't agree with.

Q. Well, then, will you explain your position and forget Mr. Hamill; explain your position on whether or not—let me give you what I really want, Mr. Casey. I want to know whether in determining to grant a permit or not you concern yourself with whether there will be a disturbance or whether there will be such a disturbance that you wouldn't be able to control it.

A. Where there is a disturbance, that I am not able to control it and I take precaution before it happens, under the same answers that I gave on unruly crowds.

Q. Doesn't it mean, Mr. Casey, that whenever there is an application for a permit to you, if a substantial number of people protest and indicate that there might be disturbance, you would of necessity come to the conclusion that the safe thing to do for Jersey City is to deny the permit?

A. I use good judgment on it. I cannot give you an answer what I would do with every permit that comes in.

Q. Well, now, let's take the——

A. There might be people that would protest but under the circumstances, after I looking that over, it is up to me to use my sound judgment on it.

Q. That is what the whole case is about, whether you did use good judgment.

A. And I think I did, you think I didn't.

Q. Now, let's go further. Did you have any protests at all in respect to the application of the Princeton debating society? Do you want to look through the papers?

A. No, I don't think I did.

Mr. Ernst: Are the protest papers here, the balance of the papers?

MR. HAMILL: I do not know. If you are addressing that inquiry to me, my answer is I don't know.

THE COURT: Isn't the gentleman who went to get them, isn't he still here?

A VOICE: I was called back.

THE COURT: So they aren't here. The answer is no.

MR. HAMILL: No, they were called back, and he never received any new instructions. You wanted him called back. Now here he is sitting waiting patiently for new instructions from you.

THE COURT: I think the instructions were that he was to get all. What became of that little message you gave him?

MR. ERNST: I dictated into the record—will you kindly go now and get all the remaining papers called for in the subpoena, including particularly the protests and all other papers in regard to applications for permits granted, pending, denied during the last three years.

THE VOICE: That's the same as I was given before.

THE COURT: No, that's a little different because I think the reason you were called back was there was some suggestion there were protests in other places than the Commissioner's office.

MR. ERNST: I said I wanted them all.

MR. HAMILL: Might it not be well if counsel would write down what he wants?

MR. ERNST: I don't intend to write it down; this is no kindergarten. You know what I want. Read the subpoena. It is typed there.

THE COURT: Get all the protests, whatever there are.

MR. ERNST: From the Mayor's office and everywhere. I don't want you to come back and say there are some others you haven't brought because we want to see the complete record. Will you kindly go right away.

MR HAMILL: Oh, now, we will object to that. You didn't take in the dog license bureau. Would you want those too? Now, here, I want to put an objection on this record. Counsel has no right to call for all the records of a certain public office. I argued that the other day. He must specify with some particularity, with reasonable particularity, what it is he wants; he cannot say "Go back and get me all the records in the Mayor's office and all the records in the Police Department and all the records in some other department."

THE COURT: All we want are the protests; Commissioner Casey said that he thought there were some protests in the Mayor's office as well as his own, didn't you, Commissioner?

THE WITNESS: Protests, yes.

THE COURT: And that's all we want.

MR. HAMILL: How does your Honor rule?

THE COURT: I want the protests in all the offices. I think there are only two that are involved.

MR. ERNST: Your Honor please, I didn't know that there were protests in the Mayor's office.

THE COURT: No, the Commissioner volunteered.

MR. ERNST: Now, if there are protests elsewhere let's have them all. What's the kidding about it?

MR. HAMILL: No, we are trying to save time, to try a case, and while we are indulgent to your ramblings there is a limit to our indulgence.

THE COURT: I am afraid I am the one that indulges everybody's ramblings.

MR. HAMILL: Well, we appreciate that, your Honor.

THE COURT: But now we know what we want I think you can get them by two o'clock.

MR. ERNST: Is somebody going to get them, I wonder?

THE COURT: Yes, there he is.

MR. ERNST: No, but is he going?

THE COURT: He is going out.

MR. HAMILL: Whom would you like to pick? You can pick anybody you want.

MR. ERNST: No, anybody, I didn't know the man: I just want to make sure there is no more runaround.

Q. Commissioner, you also have some powers over the meetings held in halls, haven't you?

A. No powers at all.

THE COURT: Is that quite so, Commissioner? You can forbid a meeting, can't you?

THE WITNESS: Where?

THE COURT: In a private hall.

THE WITNESS: I think there was an injunction issued against——

THE COURT: No, I mean you can forbid a meeting. I am not sure. The only reason is I have a case here where the police in another city did forbid a meeting.

THE WITNESS: It is according to what kind of a meeting it is.

MR. ERNST: May I refer the chief enforcement officer of the community on this subject——

THE WITNESS: I am not the chief.

MR. ERNST: —so as to modify his testimony. I ask you if you are familiar with an ordinance of Jersey City dated January 21, 1920, with respect to the use of halls.

THE COURT: Is that in the bill of complaint?

A. I am.

MR. ERNST: It is, Schedule A, your Honor please.

Q. You are?

A. I know about it, yes.

Q. And in that ordinance the Chief of Police has certain powers in respect to the use of halls, hasn't he?

A. I think that that ordinance, there was an injunction issued by Vice-Chancellor Fielder; if I am not right, I guess one of the law department might be able to explain it to you.

Q. I asked a very simple question.

A. I know it, I am trying to explain it.

Q. I asked under an ordinance—and if you will kindly read it you will see it on its face—hasn't the Police Department got some powers under the ordinance? Just read the few words——

THE COURT: This is Vice-Chancellor Fielder's case, Mr. Casey.

THE WITNESS: Well, I thought that's what he was referring to, your Honor.

Q. No, I am starting with the ordinance and just asking whether the Police Department has any power.

A. Yes, sir, under this ordinance they have.

Q. Do you know if the Police Department has ever exercised that power?

MR. HERSHENSTEIN: Which power, if your Honor please?

A. No, it was set forth in the ordinance that the Police Department——

MR. HERSHENSTEIN: Power for violating the ordinance?

A. No power vested in their hands under the ordinance.

MR. HERSHENSTEIN: I think, your Honor please, that question is too vague for this witness to answer "exercise any power under the ordinance." Now, I don't understand that.

Q. All right, we will take it simply. Commissioner, under this ordinance, under certain circumstanecs, a permit for a speech in a hall has to be first obtained from the Chief of Police, is that right?

A. Not under that ordinance. I guess it plainly states in that ordinance——

Q. If you will listen to my question, I said under certain circumstances.

A. Under certain circumstances.

THE COURT: That ordinance is practically in the same words as the Anti-Anarchy Statute of New Jersey, that is correct, isn't it?

MR. ERNST: I didn't ask the Commissioner——

A. Yes, there is.

Q. Under certain circumstances?

A. Under certain circumstances.

Q. He has to get a permit. Do you know whether the police have ever granted or refused a permit under that ordinance?

A. I couldn't tell you.

Q. Who would know?

A. That is hard to say. I don't think anybody ever applied to me.

THE COURT: Doesn't that case show there was somebody?

THE WITNESS: I guess there was somebody.

Q. I didn't ask whether people applied, I said who under you, in the Police Department, would have the information as to whether or not permits had been granted or refused, the Chief of Police?

A. Well, I don't think he would know either.

Q. You don't think he would know?

A. No.

Q. Now, who under the Chief of Police do you think would have the information?

A. I don't know of any case where we did refuse a permit.

THE COURT: Let me see if that case is the one; I didn't finish reading it.

THE WITNESS: I guess it is; there is something there.

THE COURT: I can tell in a second.

Q. Now, Commissioner, if there is a proposed meeting in a hall there might also be a public disturbance, is that right?

A. That's right.

Q. And the disturbance in the hall should also be prevented in your opinion if possible, is that right?

A. We don't want any disturbances anywhere.

Q. That's right. And the Police Department or your office takes the position that as to meetings on streets and in halls it is your duty to prevent possible disturbances by a mob?

A. At all times.

Q. At all times. And you have made that position known to the people of Jersey City?

A. They have known it for years.

Q. They have known it for years. And you yourself have so stated at times?

A. Certainly.

Q. And that applies to disturbances whether on street corners or halls, you just don't want disturbances in Jersey City?

A. We don't want them. No.

Q. And you prevent meetings where you are of the opinion that there will be a disturbance?

A. Never to my knowledge have I prevented a meeting in a hall.

Q. I didn't ask you that. You prevent meetings where you believe there will be disturbance?

A. I don't prevent them in a hall.

MR. HAMILL: He has answered it, never did he prevent a meeting.

A. (Continuing.) A hall is a private place. A man has a right to let his hall to anybody he sees fit. I have got no jurisdiction over private property or public halls.

Q. I didn't ask you whether you had, I asked you whether you, if you knew there would be a mob disturbance in a hall, whether you would do something about it.

A. Yes.

Q. What would you do?

A. I would send a plainclothesmen there to find out what's what.

Q. And if you thought that there would be a substantial mob at a hall for a meeting to be announced say tonight you would try to prevent the mob violence at that hall, wouldn't you?

A. By all means I would prevent it.

Q. And how would you go about preventing it?

A. If I thought——

Q. Let me ask you: You would warn the speaker at the hall to be careful, wouldn't you, you might start that way?

A. I would not.

Q. You would not. What would you do?

A. If I thought there was going to be a disturbance there with that party that was going to come there and

trouble was brewing, it is my duty to protect the speaker and stop violence and bloodshed.

Q. Now, that is your duty. And how would you go about it?

A. No matter where it is.

Q. What?

A. No matter where it is it is the duty of a policeman.

Q. To do what?

A. To suppress crime.

Q. No, but to protect the speaker, you said, didn't you?

A. And to protect the speaker, if I think that that man is liable to be beat up and injured and a riot will develop from it, it is my duty to prevent that.

Q. To prevent the meeting?

A. To the best knowledge that I have.

Q. Prevent the meeting. Now, doesn't that mean, Commissioner, that if there are just three or four hoodlums and trouble-makers you wouldn't call off the street meeting, for example, because you could protect the speaker from the violence if there were two or three hoodlums?

A. You have to, Counselor, as I told you before, two or three or five or six, a couple of hoodlums is liable to start a riot that will wind up with murder, you know that.

Q. That's right. And so if there are even two or three or five or six hoodlums it will go to such an extent and no one can tell in advance how far it will go, so that as I understand it, the wise thing for Jersey City is to not let any hoodlums and not allow any meeting if there are going to be some hoodlums?

A. Oh, no, not some hoodlums.

Q. What is your position? Let's get it.

A. Just a moment. Your questions are very, very catchy, Counselor. Why don't you be fair about it?

Q. You go ahead and tell me. What do you do when you think there are going to be six hoodlums?

A. Six hoodlums? I cannot tell what I would do until the occasion presents itself.

Q. Let's take any occasion in your whole history where you thought there might be a small number of hoodlums. You mentioned six.

A. I didn't mention six, you mentioned six.

Q. You mentioned if there were two or three hoodlums.

A. I might have, yes.

Q. Let's not quibble who mentioned them.

A. We won't, no.

Q. There is a situation where there are two or three hoodlums and you, as enforcement agent in the community, are worried that because, as I understand it, those two or three will be there, it might spread. Now I ask you under what circumstances do you think it is necessary to prevent the meeting altogether and under what circumstances do you say, "Well, I am going to send enough troops out, I think I can cope with the two or three hoodlums?"

A. The two or three hoodlums would be removed if they are starting a disturbance.

Q. And so if there are only two or three hoodlums would you allow the meeting to go on and just remove the hoodlums?

A. That's right, it is according to—just a minute now, Counselor. It is according to how big the meeting is and what I judge would happen from a disturbance when the occasion presents itself.

Q. Now, if the threat of the mob is too big for you to cope with then you deny the permit in order to have peace in the community?

A. I deny the permit if I think that I am going to have violence and bloodshed and riots.

Q. You mean you never deny it if you just think there is going to be a disturbance?

A. Riot or bloodshed.

Q. You weren't making a distinction between riot, bloodshed and disturbance, were you?

A. Well it practically leads to the same.

Q. That's right. And so if you ever think there is going to be a disturbance or any violence you deny the permit?

A. Yes, sir.

Q. Now, Commissioner, if two or three thousand workers in the community resent a speaker for a particular political party, let us say, the Socialist Party, you then denied the permit, didn't you, because you thought there might be a disturbance?

A. Yes, I did.

Q. Now let's assume that two or three thousand people sent in protests and said there would be a disturbance if the Republican Party had a meeting, would you treat the two situations the same or would you discriminate?

A. Now, that is a different question entirely.

Q. Just answer, would you treat them the same?

A. I would not.

Q. You wouldn't. All right. Now, why wouldn't you treat those two situations the same?

A. We have never had any trouble at Republican or Democratic meetings, they are allowed, never stopped, never investigations made of them.

Q. Now, have you got——

A. It is not the party, it is the man, the individual, Counselor, that is going there to talk that is going to cause the trouble.

Q. That is the real pivot?

A. That is the real issue, and I guess you are aware of it.

Q. That is the crux of the situation?

A. I figure that's what it is.

Q. And now I ask you to refresh your memory as to what you testified to this morning in regard to William E. Borah. Didn't you say just the opposite?

A. Oh, well——

Q. Didn't you say just the opposite?

A. No, I didn't either, not to my way of recollecting.

Q. Answer my question. Didn't you say that is wasn't a matter of Borah at all, it was the auspices?

A. Of the people that invited him there, yes, I did say that, but I am telling you about Democrats and Republicans, that is what you just spoke of.

Q. Let me get this clear as to Democrats and Republicans. You now say it depends on the people who are going to speak?

A. No, no, I never even bother with political meetings.

Q. You allow any of them?

A. Never had any bother at them, never any protests.

Q. Of political meetings?

A. Political meetings; then you mentioned, you specified Republicans.

Q. All right. Now, wait. How about other political parties, do you grant permits to any political parties than Democrats and Republicans?

A. Do I?

Q. Do you?

A. Certainly, they have got a perfect right to talk.

Q. Now, the Socialist Party, the evidence showed was denied a permit.

A. Yes.

Q. Now, you therefore did deny a permit for another political party, didn't you?

A. Well there were reasons for it.

Q. What was your reason?

A. Because of the protests over the person that was going to talk.

Q. Who was going to talk?

A. I think it was Mr. Thomas.

Q. How many protests do you think you got against Norman Thomas speaking at that meeting?

A. I couldn't tell you.

Q. What?

A. I couldn't tell you, Counselor. I just read them and lay them aside and forget about it.

Q. What?

A. I just read them and lay them aside and forget about it.

Q. Do you check up to find out whether the person who signed the protest is a live, real person, or whether it is just a phony piece of paper with a phony name on it? Do you ever check that up?

A. Well, you have got to take that under consideration. I get many a crank letter too, the same as anybody else.

Q. Oh, no, I am just asking you, do you check up ever the authenticity of the document?

A. At times, yes; find out if it is a legitimate letter.

Q. All right.

A. I don't go through all of them because——

Q. All right, name me one circumstance where you ever checked up the authenticity of the document; one out of all these thousands of protests which you say you received.

A. Why,——

Q. Name me one that you checked up personally, in the course of your duty to investigate. Name me one protest that you ever checked up to find out if it was a bona fide signature, and a bona fide organization or bona fide human being. Name me one.

A. Well, off hand I couldn't.

Q. You couldn't, all right.

A. Because I don't go into it that deep. I find out is there a man, see; does John Jones live at this address? Yes. That's fine.

Q. Now you do check up whether the man lives at the address?

A. Certainly, at times; not all of them.

Q. At times. Name me one time in your entire history where you have ever done it.

A. I can't remember it.

Q. You can't. If you can't remember, is there somebody else in your office that might remember?

A. Well, I have got other duties to consider besides checking up on every letter that I get.

Q. That's right. That's why——

A. If I had done that——

Q. That's right.

A. It would take up practically all my time.

Q. And that might have been a blessing.

A. What's that?

Q. That might have been a blessing.

A. Certainly; it would be fine.

Q. Now let me just ask you, as I was going to ask you, is there anybody in your office who did check up any of the addresses?

A. I couldn't tell you.

Q. You couldn't tell me. Did you ever instruct anybody to do it?

A. Off hand, I couldn't say.

Q. All right. Now do you know whether or not a lot of the protests are on form letters written in the same words by different people? Did you ever know that?

(No answer.)

Q. Yes or no. Did you know it?

A. I never went that far into it.

Q. You didn't go that far?

THE COURT: He has never been in Congress.

MR. ERNST: That's right.

A. No, I am not a lawyer.

Q. No, no; but you do know something about propaganda machinery, don't you?

A. Yes.

Q. You are not naive about the fact that people get other people to send telegrams in the same wording; you have heard of that?

A. There is no doubt about that.

Q. You have heard of that. But you did not check up in your situation whether you were getting letters and telegrams sent in en bloc, is that right?

A. Well, they come in, yes; I admit that.

Q. And the same wording didn't interest you? You didn't look——

A. Not in the least. I didn't go that far into it.

Q. That is right. Don't be irritated. I just want to prove——

A. I am not irritated in the least.

Q. I just want to prove that you didn't go into it at all, hardly, so don't worry.

A. It is just the routine.

Q. Now, I want the Civil Liberties outfit.

On December 17, 1937, an application was filed, it is Exhibit P-12, in behalf of the American Civil Liberties Union. Is that right?

A. Yes.

Q. Will you look through that file and let me know if that application was ever granted or denied?

A. It was denied.

Q. Under what date was it denied?

A. December 20th.

Q. Is the denial contained in a letter dated December 20th? Will you kindly read it again (handing to the witness)?

A. It is made——

Q. What?

A. It is made for four different dates, if I remember—if I read it correctly.

Q. Mr. Casey, I asked you when it was denied, not when it was made. Did you ever deny that application or grant it?

(No answer.)

Q. Take all the time you want to read the letters.

A. No, I asked for the purpose of the meeting.

Q. I ask you the question again, did you ever deny or grant the permit?

A. I have not; I did not.

Q. Neither one?

A. Neither one; by that letter of mine.

Q. Under the statute there is a provision relating to three days' notice to be given to you for an application for a permit.

THE COURT: Under the ordinance you mean?

MR. ERNST: Under the ordinance, sir. Thank you.

Q. Is that right?

A. Right.

Q. Now will you tell the Court why you neither granted nor denied the application of the American Civil Liberties Union, although there was, as has already been offered in evidence, a sheaf of correspondence back and forth?

A. No, I can't tell you why. I don't remember the incident.

Q. Will you refresh your recollection from the correspondence?

A. I asked for the purpose of the meeting and who the people are who are going to address it.

Q. And you got that information, didn't you? Let's get the record clear. That's not my question to you, but you got everything you asked for in the way of information, didn't you?

MR. HERSHENSTEIN: If your Honor please, may I call your Honor's attention and counsel's attention to the fact——

MR. ERNST: I would just like to get the answer to my question.

MR. HERSHENSTEIN: I know, but there is a delay in answering and I think the Court should know the facts. Exhibit P-12, the application now referred to by counsel, is an application for meetings to be held either on December 20th, December 21st, December 22nd, or December 23rd. The letter is dated December 17th. The witness has stated on December the 20th he replied.

asking for further information. Counsel then produces a letter of December 28th in reply to that letter, and December 28th is six days subsequent to the last date on which a permit has been asked for. Manifestly, if your Honor please, the dates having gone by, no action was taken on that permit.

MR. ERNST: If your Honor please——

MR. HERSHENSTEIN: And that is the obvious answer.

MR. ERNST: If your Honor please, Mr. Hershenstein has just skipped some intervening letters. That's all there is to it. I don't want to bore the Court on the thing. If you will see the stream of correspondence, you will see it starts on the 17th; you will find that the American Civil Liberties Union answered every letter immediately. They came over to see Mr. Casey. One of the points I hope to bring out was the point Mr. Hershenstein helped me over with—this constant delay that got the application past the date.

Q. But let me ask you to read and merely answer my question, the reason you can give me later; did you ever grant or deny the application? Yes or no.

MR. HERSHENSTEIN: The witness said it was so long ago he doesn't remember.

MR. ERNST: He should look at his files, which are all that is in the files. They are not our files; they are produced reluctantly under a subpœna.

Q. Did you ever grant the application or deny it?

(No answer.)

Q. Let me help you refresh your recollection, Mr. Casey. If you will look at the letter of December 28th, which Mr. Hershenstein did not read fully, otherwise he would not have made the statement he made, in that letter the attorney for the Civil Liberties Union suggests any date commencing

the week of January 3rd, in order to overcome the delay caused in Mr. Casey's office.

MR. HERSHENSTEIN: You are referring to your application of the 17th, Mr. Ernst, that the application was denied?

A. What date was that you were talking about?

Q. Did you either reject or grant the application of the American Civil Liberties Union referred to in that correspondence?

MR. ERNST: May I ask that the witness examine the instruments? I don't believe Mr. Hershenstein is guiding the witness, but many friends of mine in the court room have so indicated.

MR. HAMILL: Well,——

MR. ERNST: You can cross-examine him later.

MR. HAMILL: That is a suspicion that certain people some distance from the witness may be having. It is a case where I am afraid the wish is father to the thought, to the charge.

MR. ERNST: Peop'e have come up to me in the court room. I just asked the witness——

Q. Did you ever grant the application or refuse it? I would like to get an answer before we adjourn.

A. I will give you an answer.

MR. ERNST: I think it is quite important.

A. I didn't affirmatively deny it, and I just——

Q. You what? I didn't hear you.

A. I didn't grant it or I didn't deny it. I guess the last paragraph on this letter of mine to Mr. Rothbard states that.

Q. And may I see the letter to which you refer?

(The witness indicated.)

Q. It states w at? That you didn't deny or grant?

A. I think that is the way I read it. I might be wrong.

Q. Will you read that aloud into the record, and see what relation it has to denial or granting?

A. "I acknowledge receipt by registered mail this morning of your undated letter referring to your application for the permit above mentioned. I note your statement which reads: 'Of course you realize that I intended to say in each instance 1937 instead of 1938.' I commend you for your accuracy and regret that the delay in this matter has been due to your evident evasiveness and unwillingness to answer the inquiries I submitted to you."

Q. Now, Commissioner, that means that the errors as to dates were yours and not Mr. Rothbard's?

A. No, it doesn't, either. I said his.

Q. Now what is the evasiveness in the correspondence that you refer to?

A. (No answer.)

Q. Name me one item that is evasive.

MR. HERSHENSTEIN: Of course, you know your letters were about five pages long, Mr. Ernst.

MR. ERNST: This is one of the important issues in the trial and it seems to me we might be informed on the matter.

MR. ERNST: May I suggest, your Honor, that the Commissioner might care to take the papers with him at lunch hour and save time.

THE COURT: Yes, all right.

BY MR. ERNST:

Q. I would just like to ask him one question now. On December 17th at the time you received the application from the American Civil Liberties Union for that permit, did you have any protests in your possession on that day?

A. Offhand I couldn't tell you.

Q. If you had any they would be found in the files?

A. Most likely.

Q. Where else might they be if not in the files?

A. They are in my files; nobody else has access to my files.

Q. So "most likely" you don't mean that, you mean they are there or not there.

A. They are there, yes.

Q. If there were any?

A. Yes.

Q. On December 17th when you received the application did you have any reason to believe that there might be an unruly mob in case such a permit was granted at the time of the receipt?

A. I will have to look this application over and study my answers and know what my reason for it was.

Q. I didn't ask that, I just asked——

A. I cannot tell you; that is quite a while ago. As I said before, I don't want to give you a wrong answer.

Q. Of course not.

A. I want to give you a true answer.

Q. Of course, I know that. Now, as a matter of fact, if you had known on December 17th or believed that there might be an unruly mob coming out to that Civil Liberties Union meeting requested, would you have gone to the trouble to ask for additional information as to speakers, the subject matter and purpose?

A. That is why I done it.

Q. You done what?

A. Why I asked. If I asked for who the speakers were I had a reason for it.

Q. Yes, and so that means that on the application itself you weren't sure that there would be an uncontrollable mob?

A. That's it.

Q. And so you wanted to find out the speakers?

A. Just what it was and who it consisted of, who the speakers were going to be.

Q. So that means that if the proper speakers had come along, ones satisfactory to you——

A. Now, just a minute, not satisfactory to me.

Q. Satisfactory to you, if you will let me finish—satisfactory to you as not being such as would invite a mob you might have allowed the permit?

A. I would have allowed the permit if I thought that I wasn't going to have riots and bloodshed.

Q. Now, the mere fact that it was the American Civil Liberties application didn't in itself mean that there would be a disturbance, did it?

A. It did not.

Q. In other words, there is no objection in itself and only on that score to the American Civil Liberties Union?

A. I told you that no matter who makes the application, when that application is made to me I study it and I find out whether it is going to cause trouble or not.

Q. You have told me that often, but that is not my question. My question is, it is very simple, Commissioner,—it is the last question before recess, when you received the application of the American Civil Liberties Union on December 17th, if you had merely, because it was the American Civil Liberties Union, thought there would be a disturbance you would have denied the permit then and there?

A. I would not. I take time to investigate it. That is why I denied it if I did deny it.

Q. In other words, the American Civil Liberties Union on its face as an organization was not banned from meetings?

A. They are not banned, no. I didn't ban them from meetings.

Q. No. It depends on who the speakers are?

A. And the trouble that will be caused by their talking.

Q. But it does mean that the Civil Liberties Union as such is not banned?

A. I don't ban anybody.

Q. Denied the permit?

A. I denied it for what I considered just cause.

Q. But on December 17th without having any protests——

A. I don't know whether I had or not.

Q. If there are none in the files.

A. I don't remember what led up to it or why I did deny the permit if I denied it.

Q. If you denied it. So at the moment you don't know why you denied it, if you denied it?

A. I don't remember.

Q. And even by looking over the correspondence you cannot recall?

A. No, I have had other work to attend to without paying strict attention——

Q. We have all had other work.

A. —applications, certainly.

Q. But by looking over the correspondence you cannot tell whether you denied or granted the permit?

A. No, I can't. I don't say I denied it—or I did answer it; I cannot tell you that.

Q. Frank Hague has a large following in Jersey City, hasn't he, a man of great popularity?

A. I guess so.

Q. You guess so; don't you know it?

A. Well, it seems so, doesn't it?

Q. It doesn't to me but you know.

A. All right, it does to me.

Q. If Frank Hague had told these mobs that were forming and which might make trouble for you, to be quiet and peaceful, would he as the chief officer of the community have had enough influence to make them lawabiding, not to act as a mob?

MR. HAMILL: I object to that question.

Q. Let me finish my question. Would he——

MR. HAMILL: Object, object.

THE COURT: He could only guess, I think, on that.

A. I am not guessing; Frank Hague can talk for himself on that, Counselor.

MR. HAMILL: I object.

MR. ERNST: Your Honor please, this man says that he looks at the protests and decides from the protests that there will be an unruly mob that he cannot govern.

MR. HAMILL: Now, that is an absolutely illegal, inadmissible question, asking him to characterize another man.

THE COURT: Two o'clock.

(Recess.)

AFTERNOON SESSION.

MR. ERNST: Are the protests here?

MR. HERSHENSTEIN: They are on their way. They will be here any minute.

DANIEL CASEY resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. ERNST:

THE COURT: Now, is there a question?

(Pending question, answer and objection read by the reporter.)

THE COURT: You have no opinion on that?

THE WITNESS: I have got no opinion, your Honor.

THE COURT: I don't see how anyone could have. There are too many psychological elements involved in an opinion.

MR. ERNST: Well, there aren't many more psychological elements involved than appraising from between the lines of newspapers, as to whether a particular crowd of people are coming with brickbats and make a disturbance.

THE COURT: I didn't think that was a very good way of appraising, either.

Q. Have you got the answer to my question, as to whether or not the Civil Liberties Union permit was granted or denied?

A. I can't tell you. I don't see any answer that I sent back to Mr. Rothbard, where I might have. I haven't got a copy of it here. And I don't think that I answered that letter. I might be wrong on it, Counselor.

Q. But you don't know at the moment whether then you denied it or granted it?

A. I couldn't tell you. I would have to see the letter. The copy of it I haven't got.

Q. Now I asked you another question in regard to what you claimed was the evasiveness on the part of the Rothbard correspondence. Have you been able to find a single instance of evasiveness?

THE COURT: The Mercury has arrived.

MR. ERNST: On winged feet.

MR. HAMILL: With the ammunition.

THE COURT: We don't know about that.

A. I cannot find that evasiveness, if you will excuse me. You will have to help me on that, Counselor; I don't see that.

Q. I cannot find any myself: I thought you might want to correct the implication of the letter.

MR. HAMILL: I can find one if you want to call me in.

MR. ERNST: I would like you to indicate it.

MR HAMILL: I am reading from the letter of December 17th: "In any public park or in any plaza whatsoever that you might designate." It is evasiveness in the sense that it does not ask anything definite and it is not the duty of the Director of Public Safety to pick

any place for a meeting; it is the province of the applicant to state where he wants to hold his meeting.

MR. ERNST: What letter is that, Mr. Hamill?

MR. HAMILL: I am talking about the letter of December 17th——

A. Yes, this is it here.

MR. HAMILL: 1937.

Q. And that is what you might have thought was evasive?

A. What is that?

Q. The fact that the application said, "will speak anywhere in town. You designate the place."

A. I designate it?

Q. No, Mr. Hamill points out that what you may have thought was evasive in the application was that the applicant, instead of designating a particular place, said, "You designate the place."

A. Well, that's it, most likely.

Q. That is it?

A. Yes. That is what I must have thought.

MR. HAMILL: I am talking about the letter of December 17th, Mr. Ernst.

MR. ERNST: On what date?

MR. HAMILL: Where he asks on the court house steps. It could be evasive on that, because that's county property, and we have absolutely nothing to do with it.

Q. Now, Commissioner, if that is the basis of the evasion, why did you ever write to Rothbard and say, "designate a particular place"? You did write him about speakers; you wrote him about purposes; you wrote him about the subjects to be discussed. If that is what you meant by evasive, why didn't you ask him to clear it up?

A. Well I don't——

MR. HAMILL: I object to that.

A. Offhand, I can't bring the incident to my recollection, whether I answered that letter or not, Counselor.

Q. You have no recollection?

A. I have no recollection of [illegible].

Q. Now would you say, because you can't tell from the records, whether or not the permit was ever granted or denied, would you say that at this moment it has never been granted or denied?

A. Well I couldn't, no, I wouldn't.

Q. Wouldn't it be a fair statement to say that around December 27th, if you look at the correspondence, you intended to deny?

A. I would not say I intended to deny. I don't remember now, and I couldn't give you a definite answer on it.

Q. Will you grant the permit today?

A. I will not.

Q. Will you deny it today?

A. I will.

Q. You will deny it today. And would you have denied it yesterday?

A. Certainly I would have denied it yesterday.

Q. And what date would you have denied it first?

A. Well, I couldn't tell you that. You asked me—you specified yesterday and today.

Q. And when did you first make up your mind—take a look at the correspondence—that there might be an unruly mob in the event that the Civil Liberties Union application was granted?

A. I couldn't tell you that, Counselor.

Q. You couldn't tell me that. And you are in charge of the administration of the issuance of permits?

A. Yes.

Q. Nobody else in your office would have authority either to deny or to grant, would they?

A. No, they wouldn't.

Q. Now, certainly as late as December 28th you had not made up your mind that there would be an unruly mob, is that right?

A. I cannot state that, I don't remember; I cannot recollect.

Q. Now, let me just refresh your recollection. Around December 28th you wrote a letter asking for more information, didn't you?

A. I did, yes.

Q. You wouldn't have written a letter asking for more information if you had already come to the conclusion that there would have been a mob which you couldn't handle, would you?

A. My mind must have been open when I wrote that letter.

Q. Must have been open when you wrote the letter. Have you got the protests here?

MR. HAMILL: I have whatever is in this, Mr. Ernst. I shall give it to you just as I have it.

MR. ERNST: If your Honor please, I would like to save the time of the court by having my associates look through these files for this purpose. I want to find out what, if any, protests were in the possession of the Director of Public Safety at the time of his denials of the permits. A good many of them I see on the face of it came in long after and could not have been used by him for the purpose of making up his mind. I think if we take out a few moments while I go on with another line of inquiry it will save the time of everybody.

Q. When people indicate that there will be a mob, Director, which may interfere with the meeting, do you ever warn the spokesman for the mob or the people that they should not act as a mob and break up meetings?

A. I told you, Counselor, this morning that that is the duty of the Chief of Police.

Q. But you never do it?

A. I have got nothing to do with that.

Q. Now, did you have anything to do with a meeting at the Armory on December 28th, I think it was?

A. I was there.

Q. You were there. Did you have anything to do with the organization of that meeting?

A. Of the meeting, no, I wasn't concerned with that meeting.

Q. You didn't have anything to do with the sending out of notices for it?

A. Only just sending notice to the Chief of the Police Department to police it.

Q. Did you have anything to do with the distribution of postal cards by local political clubs, churches and others to get the crowd out to the meeting?

A. I had not.

Q. You had nothing to do with it?

A. Nothing to do with it. I am not a politician.

Q. What?

A. I am not a politician.

Q. Did you or did you not receive from the office of the Mayor a typewritten memorandum urging you to get all of the people in your department to go to the meeting at the Armory? I will show you a copy of the notice.

A. O.K.

Q. And see whether that refreshes your recollection.

Mr. Ernst: If your Honor please, I have got a copy here which contains typewritten on it—I have received a great number of copies of notices purporting to go from the Mayor's office, signed "Message from the Mayor's Office." Important notice. All veterans report at Armory tonight, Tuesday, December 28th, at 8 o'clock p. m. sharp. This is important."

I would like to refresh the witness' recollection on my question, and I want to call to your attention that I am turning over the top of this piece of paper, which I will be happy to show you, because it exposes the

initial of the person in the department who mailed the notice to me.

MR. HAMILL: Well, now, if your Honor please——

MR. ERNST: And my only purpose of turning it over is not to conceal anything that is part of the notice, but to preserve the liberties of some human being.

MR. HAMILL: We want to know, of course—Mr. Ernst has no right to read that document in court before it goes into evidence, but, of course, his purpose is plain; he wants that for the newspapers. But even so, that cannot be used until we know its authenticity.

MR. ERNST: I am just using——

THE COURT: Do you want to show it to Mr. Hamill?

MR. ERNST: I am just using it to ask the witness if it refreshes his recollection. Then I may determine whether I will put it in.

MR. HAMILL: Determine whether it is genuine, that is all I can say to you.

MR. ERNST: No, no; he can't testify whether it is genuine or not. All I want to do is to see if this refreshes his recollection, as to whether or not he did not receive from the Mayor's office advice of a similar nature, urging that all department heads get the veterans out for the meeting.

A. I didn't——

MR. HAMILL: Well, he can answer that question. I mean you don't intend to put that in evidence.

MR. ERNST: No, no.

A. No, I didn't issue any orders.

MR. HAMILL: I don't know why he shouldn't answer it.

A. I didn't receive any orders to get all the veterans out or anybody.

Q. Did you receive any message from the Mayor's office?

A. No. This is the first time I ever saw anything like that.

Q. Did you ever see anything like that before?

A. Never. This is the first time I ever saw it, when you showed it to me.

Q. Did you or did you not see or purchase or order the printing of postal cards distributed by the Democratic clubs, or some of them, of the city, urging people to go to the Armory meeting? I will show you samples of those cards. I have just a few of them. Seventh Ward Democratic Club, Eighth Ward Democratic Club, Fourth Ward —(showing to the witness).

A. No, I never saw any of them.

Q. You never did?

A. And I had nothing to do with them. I don't know anything about them.

Q. You had nothing to do with the ordering, the printing or the distribution?

A. I didn't order them or have them printed.

Q. You were at the Armory meeting?

A. I was.

Q. Did you make a speech there?

A. I did not.

Q. The Armory meeting was an influence on you in making up your mind as to whether or not there would be a disturbance through an unruly mob if permits were granted to the Civil Liberties Union and the CIO?

A. Partly.

Q. Now, you knew, did you not, that the mob might take the situation in its own hands?

A. Well, several thoughts went through my head on that. I used precaution the way I felt about it, tried to avoid trouble.

Q. You what?

A. I used precaution, tried to avoid trouble.

Q. That is one thought. What other thought went through your mind? You said several.

A. Well, the thought of the mob getting away from me, having somebody killed, generally what would go through any man's head where he thinks the trouble is going to happen and in his best judgment he can avoid it.

Q. You wrote in a letter of December 30th, which is in evidence, "On the evening of December 28, 1937, a great mass meeting was held in the armory at Jersey City attended by over three thousand persons, all of whom were veterans."

A. Right.

Q. How do you know all of them were veterans?

A. Well, I take that from what I read in the papers, they were veterans. I had no way of finding out, I didn't go there.

Q. You didn't go there?

A. I didn't go to that meeting where the three thousand veterans were.

Q. In the armory?

A. I didn't go there.

Q. At that meeting you wrote "A resolution of opposition was passed against the granting of the permit."

A. Right.

Q. Then you go on to say "Violent disorder was threatened on the part of the veterans in case the meeting was held." Do you recall having written that?

A. Yes, I do.

Q. Now, when there is a threat like that made would you ordinarily communicate with the Chief of Police to keep an eye on this crowd that is threatening violence or would you do nothing about it?

A. I spoke, I think I spoke to the Chief about it.

Q. And to what effect generally, not the conversation?

A. Well, I told the Chief that I didn't want any violence to happen in the city.

Q. And did you tell the Chief to do anything in relation to these people who you say in your letter were threatening violence?

A. I asked the Chief to check up on it.

Q. Did he check up, do you know?

A. He couldn't find anybody—there was a statement from one man there after the check-up that—well, he was excited over it and I guess he was saying what he didn't mean.

Q. You mean a statement that he threatened violence?

A. And there was no meaning to it.

Q. So you came to the conclusion after talking to your Chief who made the investigation that there was nobody there who really meant to threaten violence, is that right?

A. Well, that is the one that I have reference to.

Q. Just one person?

A. As I said before, Counselor, the psychology of mobs or crowds when they get together is something that no man can fathom.

Q. Let's just leave that out, you have said it many times. I want to ask you just simple specific facts, Commissioner.

A. That's what I am trying to tell you.

Q. You said that violent disorder was threatened on the part of the veterans in case the meeting was held.

A. Right.

Q. I understand you asked the Chief of Police to investigate and the Chief of Police reported but one person that he could find who threatened violence but he didn't quite mean it, is that it?

A. That's the way that I understood it.

Q. So the balance of the three thousand people didn't worry you because you felt after investigation of the Chief of Police that they would commit no violence?

A. I didn't say that; I acted the best of my judgment in refusing that permit.

Q. I am not asking about that.

A. I weighed that question in my mind and that is the solution I came to in refusing the permit.

Q. I have heard that many times. If you will follow me we will finish quickly.

A. I am trying to, that is my only answer, Counsel.

Q. But your Chief of Police made an investigation as to the threats of this mob?

A. It wasn't the threats of the mob, it only mentioned one person in the paper, I think.

Q. You said here in your letter "Violent disorder was threatened on the part of the veterans." You didn't say some of them—the veterans—"in case the meeting was held" and I understand that you asked the Chief of Police to look up those threats.

A. I did.

Q. And his report to you was what?

A. His report to me, if I remember rightly, we had a verbal conversation on it, was that they were all up in the air about these people coming in and they weren't going to let them speak; that was the general feeling that was there, that he could find out.

Q. And therefore his report was, as I understand you now, that these people's threats were meant and that they meant to stand by them?

A. Yes.

Q. Is that right?

A. There would be trouble.

Q. That is right. And that they would make trouble.

A. That is it.

Q. Now you went on further to say, "Announcements were made from the floor and these announcements had the approval of the meeting, that if I should refuse to honor the veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up."

A. Right.

Q. Now what did you do after that?

A. What did I do?

Q. Yes. Denied the permit, didn't you?

A. I denied the permit as to it.

Q. All right. Now in other words you were convinced, on the basis of your investigation as indicated here, that because the veterans had said that they would take matters into their own hands, that you had better deny the permit in order to have peace and order?

A. That is is.

Q. Is that right? And this consisted of approximately three thousand people at a meeting, is that correct, at this meeting?

A. Three—that's what they claim were there.

Q. They claim?

A. I don't know what was there.

Q. Now did you at the same time in the course of your investigation discover that the County Council of Veterans of Foreign Wars of Hudson County held a meeting on December 29th in West New York and took a position in regard to this same matter? Did you ever run across that?

A. Offhand I couldn't say.

Q. You are familiar with the County Council of Veterans of Foreign Wars?

A. I am not. I couldn't tell you who the head of it is.

Q. You don't know who the head of it is?

A. No.

Q. You don't know about it. Now this veterans' group that met at the armory, was that an organization or was it just a lot of veterans?

A. I couldn't tell you that.

Q. You don't know that, so as far as you know it was three thousand people gathered together?

A. That is all I know about it.

Q. That were supposed, according to the newspapers, to be veterans; they threatened disorder, they threatened to take the control in their own hands if you granted the permit, and you denied the permit?

A. I denied the permit to stop trouble and violence, as I stated before. That was my reason for it.

Q. Now if you had known that the County Council of Veterans of Foreign Wars had held a meeting on December 29th in West New York, debated the matter of denial of permits for two hours after regular notice had been sent to its entire membership, and as a result of that debate they did not come out and approve the Civil Liberties Union or the CIO but they condemned the denial of permits, would that have affected your judgment?

A. It would not.

Q. It would not. In other words, no matter how many resolutions that came from other sources, stating that the permit should be granted, you would still be worried because these veterans threatened to take over the matter into their own hands?

A. I would take it into consideration and use my best judgment on it.

Q. But these other opinions of organizations of veterans wouldn't have altered your opinion?

A. Not in the least.

Q. Now you know, of course, of the Council of U. S. Veterans Inc., Mr. Robbins, Commander?

A. I don't even know him.

Q. You don't know abont him. Well, if you had known——

A. I might know him but at this time—if you give me his name. I don't know him by name. I might know him by sight.

Q. Well, it is just one of the leading organizations of veterans and I thought you might know it.

A. No, I don't.

Q. If you had known that that organization of veterans had taken an official position through resolutions condemning the position of Mayor Hague on denial of permits, that would not have influenced your judgment in denial of the permit?

A. Now, just a minute. You are mentioning there Mayor Hague. I don't know what Mayor Hague has got to do with it. I denied the permit.

Q. Well——

A. I denied that permit.

Q. Let me just ask you on that.

A. Yes, sir.

Q. Do you know as a matter of fact that Mayor Hague has made statements that none of these permits would be granted?

A. I am not accountable for Mayor Hague's statements.

Q. I didn't ask you that. I just asked you, do you know whether he made such statements?

A. He has.

Q. He has. Now if the Council of U. S. Veterans, if you had known that they had passed resolutions concerning the action of Frank Hague and Director Casey in respect to the denial of permits, would that have altered your opinion?

A. It would not.

Q. It would not? The fact—let me put it this way. You read the papers pretty generally?

A. Certainly.

Q. Do you ever read the New York *Times?*

A. I do.

Q. Dou you read the *Tribune?*

A. I do.

Q. The *Telegram,* ever, New York *Telegram?*

A. Yes, sir.

Q. New York *Evening Post?*

A. I do.

Q. Do you ever read the editorials in any of those papers?

A. Just a moment. What was that you said?

Q. New York *Evening Post.*

A. No, I don't.

Q. You don't read it?

A. I don't read it.

Q. When is the last time you read the *Post?*

A. I don't know if I ever read it.

Q. Why don't you read it? On account of the attacks——

MR. HERSHENSTEIN: Now, if your Honor please, I object to that.

A. Well, that's making a joke out of it, Counsellor.

Q. Now the New York papers, the *Telegram*, the *Tribune*, the *Post*—the *Times*—had editorials in regard to the denial of permits. Did you ever happen to read any of those?

A. I have read them, yes.

Q. What?

A. I have read them.

Q. You have read them. And if it is a fact that those papers condemned the position of Frank Hague and Director Casey in the denial of permits, would that have had any influence at all on your decision in denial of the permits?

A. It is just their opinion against mine.

Q. I know that. They differ with you.

A. They differ.

Q. But would it have had any influence on you?

A. It wouldn't have influenced me in the least.

Q. No. Now, as a matter of fact you know that those papers and others condemned the denial of permits, and it did not influence you?

A. It didn't influence me in the least.

Q. The fact that men like Father Ryan, John A. Ryan, of Washington, and others, issued public statements that appeared in the press, condemning Frank Hague, and you, and the city administration, for the denial of permits——

MR. HAMILL: I object to all that. We don't know whether that is a fact or not, and we are not going to

have evidence slipped into the record under the form of a question. I object. It is an old discredited trick.

MR. ERNST: I will get it in.

MR. HAMILL: Well, get it in legally.

Q. Do you remember reading in the newspapers a statement issued by Father John A. Ryan of Washington, condemning the denial of permits and civil liberties?

MR. HAMILL: I object to that. I object to the form of the question.

MR. ERNST: He can answer yes or no.

MR. HAMILL: I object and ask that it be stricken out. I had no time to object before it was offered, so that I cannot be accused of having listened to it and then found out I didn't like it. It had to be expressed before I could object to it.

THE COURT: Just answer yes or no.

A. I have never read Father Ryan's article, Monsignor Ryan's article.

MR. HAMILL: Your Honor allows the qeustion?

THE COURT: I have allowed him to answer yes or no. He said he never read it.

MR. HAMILL: I ask that the question be stric —

MR. HERSHENSTEIN: That the answer be stricken.

MR. HAMILL: That the question be stricken out.

THE COURT: That the question and answer be stricken out.

MR. HAMILL: All right, that the question and answer be stricken out.

MR. ERNST: The question is entirely proper, your Honor. I merely asked him if he knew.

MR. HAMILL: The question is not proper.

MR. ERNST: He didn't know, so I am not going further.

MR. HAMILL: All you can do in the question is indicate what it is you want to know. Did you ever read a statement regarding Mayor Hague by Father Ryan? That would be the question. But not go in and state the contents of it, unless he is going to get a number of those statements.

MR. ERNST: If your Honor please, there might have been something to Mr. Hamill's point of view if the witness had not indicated that one of the main foundations for the determination in his mind of this great discretion vested in him by the ordinance was what he read in the newspapers and between the lines. He opened to the door to that completely, and he cannot now preclude me from asking if he remembers seeing this or that in the newspaper.

MR. HAMILL: That doesn't excuse you from putting in illegal evidence.

MR. ERNST: Oh.

THE COURT: Go ahead. There is no evidence on that point at all.

Q. Now, Director Casey, do I understand that the protests which have come here pertaining to the subpœna are all the protests that you have in your possession or that you have seen?

A. Well, it is hard to say; I couldn't tell you now who it was that sent them, offhand.

Q. Have you inquired, did you get all the papers there are?

A. I didn't see the papers that were brought here.

Q. Well, can you ask the person you sent to find out?

MR. HERSHENSTEIN: We never saw them, we handed you the envelope.

MR. HAMILL: I never saw them. What happened was this witness telephoned and the papers were sent over.

THE COURT: Show them to Commissioner Casey.

MR. ERNST: It won't do any good to show them to him, your Honor. I must some day get the affirmative statement that this is all so that they don't come back later on cross-examination with some other nonsense, some other protests.

MR. HAMILL: I object to "some other nonsense."

MR. ERNST: I am willing to face all the instruments they can give to me, from the Mayor's office and everywhere.

THE COURT: Could you tell by looking at them, Commissioner?

THE WITNESS: I couldn't tell, your Honor, what I received; I just looked at them.

MR. ERNST: Could I suggest this, that maybe Mr. Hamill could telephone or have someone telephone to find out from someone he has confidence in in Mr. Casey's office as to whether or not we have everything from that office?

MR. HAMILL: No, I am tired running errands for you. You will have to do that for yourself.

THE COURT: Maybe the Mercury here could tell us.

MR. HAMILL: Ask Mercury; he is wing-footed, and can tell.

MR. ERNST: Maybe we could rely on the subpœna duces tecum. This is no favor to me, this is no errand: this is the mandate of this Court.

MR. HAMILL: And he has brought you all the papers that were given to him, which I assume were all the papers that there are, although I don't know.

MR. ERNST: I cannot take your assumption, Mr. HAMILL.

MR. HAMILL: I cannot take it myself, I don't know.

MR. ERNST: It has been wrong three times this morning; each time you were wrong.

MR. HAMILL: I think when his representative was in my office yesterday he told my clerk and Mr. Glavin that he didn't want them. That is what I was given to understand.

THE COURT: Do you want the protests that are here? Now, will you look at them? Can you tell by looking at them if they are all right?

THE WITNESS: Well, I couldn't, your Honor, because as I say, they come in, I don't know how many I got, I never checked up on them.

MR. ERNST: Your Honor, please, I——

THE WITNESS: (Interrupting.) I never index as to who I get a letter off of and file it away.

MR. ERNST: I think there ought to be an instruction to somebody to communicate with the office of Mr. Casey to find out if there is anybody there who can testify that this is all there is in the way of protests.

THE COURT: Where did you get them from, Mr. Mercury?

A VOICE: They come from Commissioner Casey's office.

THE COURT: Who from there?

THE VOICE: Well, I don't know. I telephoned over and they sent a man with them to save time.

THE COURT: A man brought them; is he here?

THE VOICE: A man brought them to me.

THE COURT: Is he here now?

THE VOICE: No, I asked for all that they had.

MR. ERNST: I think I can simplify it. If we could get a ruling from you on this point, I am willing to assume that these are all the protests, provided, if there is an offer to introduce any further protests by the defendants, on our motion to preclude, you will preclude, which I think is fair and decent.

MR. HAMILL: It is very adroit and purposeful, but it isn't fair and decent. You are asking this witness are those papers the only papers which motivated him in making his decision, and he says "I don't know." Now, even if they were all the papers, how much further do you get in pressing your question? He says, "I don't know whether they were or not."

MR. ERNST: There is a subpœna out——

THE COURT: There is a subpœna for all the protests, Mr. Hamill. Now, at some time or other that subpœna has got to be returned. Do you agree that it has been returned with all the protests?

MR. HAMILL: Yes, yes. I don't know whether those are all the protests; I know that they came over here.

THE COURT: You agree that the subpœna has been returned?

MR. HAMILL: I understand there is a subpœna which has been returned. Why doesn't counsel show us the subpœna if he has a copy of it?

MR. ERNST: We gave it to you. We handed it to you.

MR. HAMILL: When?

MR. ERNST: Mr. Casey got it. That is why he brought us a few papers.

MR. HAMILL: Have you it here this minute?

MR. ERNST: He has got it.

THE WITNESS: It is in that envelope there.

MR. ERNST: We don't retain the subpœna, we leave it with him.

MR. HAMILL: Well, all I can say is we cannot find it, your Honor, we have hunted for it. Have you a copy of it?

MR. STOFFER: Yes, I turned it over to you.

THE COURT: The only thing is, Mr. Hamill, we don't want to have protests turning up every other day so we want to find all there are and put them in.

MR. HAMILL: My only point is I don't know what those are.

THE COURT: You must know where they are.

MR. HAMILL: I only know they came over.

THE COURT: Someone must know whether those are all there are.

MR. HAMILL: I suppose that is so and yet in a public office it may be that nobody knows whether they are all there are. Now, I know that seldom happens but it could happen.

MR. ERNST: Your Honor, there is a mandate out of this Court to get instruments which we are entitled to. We were told first they couldn't be brought because it would upset the office, they were so tremendous, like the Register's office; it turned out to be three little files. If your Honor please, I am perfectly content to accept the documents now in Court as a satisfactory response

to the subpœna provided it is understood that any additional material will be precluded on my motion; otherwise I will have to wait until you get me somebody and I will subpœna everybody in the office to find out whether the subpœna has been obeyed. It is not my subpœna, it is the Court's subpœna.

MR. HAMILL: We will not enter into any such stipulation.

MR. ERNST: I didn't ask you to stipulate, I asked a ruling.

MR. HAMILL: We do not know and cannot agree to that; that is our situation.

MR. ERNST: Then we will have to produce some more people from the Commissioner's office.

MR. HAMILL: All right.

MR. ERNST: Your Honor, please, I ask Mr. Hamill if he will require a subpœna. I have to get the entire force in Mr. Casey's office.

MR. HAMILL: All right.

MR. ERNST: If you are going to run me around one after the other——

MR. HAMILL: If your Honor please, I am tired of being called upon by the other side to prove their case.

THE COURT: No, but you have to answer the subpœna.

MR. HAMILL: I had the same thing from Mr. Frazer. "Would I admit that these industries are in Jersey City." Now, we are not asking any favors and we are giving none. You will prove your case according to the law without asking any favors from me because they will not be granted.

MR. ERNST: Your Honor, please, I am now forced to the position where an order of this Court having been

outstanding in the hands of a high official of the community, an unsatisfactory response having been made to the subpœna duces tecum, we tried to facilitate it by having somebody look at the material, we are told that it will come over here,—we are now told that nobody can testify whether it is all here. I now call upon your Honor to consider whether it is not high time to entertain a motion for contempt of the Court's subpœna duces tecum.

MR. HAMILL: Now——

MR. ERNST: There is no reason in the world—I am not asking Mr. Hamill to prove anything. I wanted to facilitate it, and I do think there is no possible other way out. Here is an order outstanding, they haven't responded to it.

MR. HAMILL: Now, if you have finished I want to be heard, of course. The subpœna duces tecum was issued by the solicitors for the complainant under, of course, the rule which permits a solicitor to be an agent of the Court for that purpose, and it was not an order vised by the Court before signing; it was an order prepared by the solicitor for the complainant, and, of course, it has no particular interest in wanting it. Then we came here and there were no papers here and your Honor directed that an agent, a lawyer, to be selected by Mr. Ernst go to Jersey City and obtain the material. That man was given every opportunity and we thought the matter was settled. Then we were not to bring that material in today because the investigation was made by his attorney. We came here and didn't have the material. We were not to have it. Then your Honor told us to get it. We did the best we could. This agent at our table telephoned and said, "Send over all the material you have." Then they asked the Commissioner, "Is this all the material you have?" He says, "I don't know." And the best we can say is that we

told a man "Send over all the material you have"; whether he complied with that or not there is nobody in this court room now who can say. Now, that is our situation, and he asks for an order of contempt. It would be a very nice thing to argue on a question of contempt just how far that subpœna ought to extend and whether he can give a blanket subpœna to bring in all the public records in a public office.

If it causes him a great deal of difficulty to prove his case, well, that's one of the difficulties trial lawyers must contend with.

THE COURT: Well, aren't we wasting time, Mr. Hamill? Are these all the protests, or aren't they?

MR. HAMILL: I don't know.

THE COURT: You can find out.

MR. HAMILL: I will say this, that I never saw the protests. I don't know what is in the papers now, and I don't know what those papers are, except somebody has been speaking about them as protests.

THE WITNESS (aside to the Court): When he was over to my office yesterday, your Honor, they asked him if he wanted them, and I was given to understand that he said no. They asked him if he wanted them brought here this morning.

THE COURT: Doesn't your clerk know all there are, Mr. Ernst?

MR. ERNST: No. He was told, and this is his report to me, that there were approximately a hundred total.

THE WITNESS: He seen them.

MR. ERNST: Well, there aren't a hundred, as I see them here. Most of these that appear here are unrelated in a measure to the particular issues, because they fell way late in May, in June, a good many of them.

But I don't care whether there is one or a thousand. All I want to know is that I am not——

THE COURT: Did he see them?

MR. ERNST: No, he didn't even see them. His report to me on that subject, typewritten, was as follows——

MR. HAMILL: May I ask what paper you are referring to, Mr. Ernst, so I may follow you?

MR. ERNST: I am referring to a confidential report made to me by Mr. Britchie, who was over in the office with Mr. Glavin.

MR. HAMILL: I didn't see that. You wouldn't let me in on that.

MR. ERNST: I haven't it handy now, your Honor, but my impression is that he found about a hundred. Clearly we weren't to send a man over there just to have the man just look at them. Clearly we couldn't have that man testify as to what was in them. The purpose of having the man go over was that I thought there were thousands of letters and files, and we didn't want to disturb people by bringing them all over. Then I found out there are a hundred. I asked them to be brought here. Your Honor will have to resolve the problem.

MR. HAMILL: If he had sent—if your Honor please, as I understand, the purpose of sending the lawyer over was not only to look at them, but to copy such parts as he deemed necessary and relevant, and then I think it would have come under the rule of an examined copy, and it could go in whether we liked it or not. But if some officer read the copy he made and said, "Yes, you have copied it correctly," we wouldn't object and shouldn't object, and ought to be overruled if we did object.

Q. Mr. Casey, will you look these over and tell me if you know of any other protest that isn't here? Are there some more there? I will give you the balance here. Look them through and see if you know of any others that are not there?

A. Well, that would be a hard thing, Counsellor, for me to say.

Q. It would be impossible, wouldn't it?

A. It is impossible for me to say that. You know that.

Q. Sure. The only way you can really find if they are all here is to find out from the person responsible for filing them, whether they have really delivered them all. Can't you easily go to the telephone and find out in a few minutes whether they sent over everything that is there in the files on protests? Can't you do it in two minutes?

A. Why yes. There is nothing to prevent it. I have got no objections to it. I think——

Q. Will you kindly do so then?

A. Well, if I am told to do it I will have to do it. I don't know——

MR. ERNST: Well, will the court permit the witness to do so?

A. (Continuing.) I am not a lawyer. I don't know what I should do in a case of this kind?

MR. ERNST: The lawyer was not handed the subpœna. This man was——

THE COURT: You don't mind the Commissioner finding out, do you, Mr. Hamill? Surely not.

MR. HAMILL: Finding out whether he has been——

MR. ERNST: Finding out whether he has been responsive to the subpœna. That is all there is to it.

MR. HAMILL: Whether he has been responsive? I can answer it now. He has been.

MR. ERNST: He has been?

THE COURT: Well, then, no more protests are in his office?

MR. HAMILL: He has answered the subpœna.

THE COURT: What?

MR. HAMILL: He has answered the subpœna.

MR. ERNST: Oh, no.

MR. HAMILL: And as far as his knowledge goes, all of these came. He doesn't know whether they are all the papers or not.

THE COURT: We are trying to find out. Aren't we wasting a lot of time and being a little bit too lawyer-like, Mr. Hamill?

MR. HAMILL: You know here is the situation——

THE COURT: We could subpœna a lot of other people and find out, but what is the use? The telephone is available.

MR. ERNST: Your Honor, may I suggest that the witness who was handed the subpœna has indicated that if he thought it was proper, he could go to the telephone, call up the people in his office who are responsible for filing this kind of document away, and ask them when the telephone call came in to have Mercury bring over the material. That's how simple it is.

THE COURT: You don't object to that, do you?

MR. ERNST: Unless there is something to be concealed.

MR. HAMILL: No, there is nothing to be concealed.

MR. ERNST: Why don't you let your witness telephone and find out?

MR. HAMILL: For the reason that he is not obliged to do that, and there is no aid going to be given. You

get your evidence as you should get it. We are under——

MR. ERNST: I move, your Honor,——

MR. HAMILL: I am not going to have you stand up and say "since he committed contempt, we will let him slither out by going to the telephone."

Now he did not commit contempt of court. You will have to get your evidence yourself.

MR. ERNST: May I ask whoever gave the message to bring over the material, whether they also telephoned for the alleged protests which were in the Mayor's office?

A VOICE: I did.

MR. ERNST: You did. And those were, as far as you know, delivered here also?

MR. HAMILL: No, he didn't go there. He only telephoned.

MR. ERNST: All right. Now, if your Honor please, on the theory, on the assumption that the papers now in this court room relating to the subject of protests are all the protests in the Mayor's office and in the office of the Director of Public Safety, I move at this time to preclude the introduction of any protests on the part of the defendants in respect to meetings out of doors.

MR. HAMILL: I object to the motion on the assumption he said that these are all that are there. There is nothing in the evidence yet to show that they are all that are there. So it contains an assumption of fact not justified by the record.

MR. ERNST: I will add an additional assumption, your Honor, if it will satisfy Mr. Hamill.

MR. HAMILL: It doesn't satisfy me.

MR. ERNST: To the effect that since the subpœna had been served and this is the response made to it in the court at this time, I predicate my motion also on that fact——

MR. HAMILL: Now, he is not—excuse me. Have I interrupted you, Mr. Ernst?

MR. ERNST: Go ahead.

MR. HAMILL: I am sorry.

MR. ERNST: I have made my motion. I would like a ruling on it, your Honor.

MR. HAMILL: He is not the custodian of all of the protests in the Mayor's office. He is not the custodian of any of them in the Mayor's office.

MR. ERNST: I will accept the motion to preclude at this time, limited to all the protests made to the Commissioner of Public Safety.

MR. HAMILL: If he knows.

MR. ERNST: My motion has no—"if he knows" about it. There may be others.

THE COURT: Well, who knows? Who knows?

MR. HAMILL: I don' know. Ask the Commissioner.

THE COURT: The Commissioner wants to help.

MR. HAMILL: Ask the Commissioner. I don't know.

THE COURT: The Commissioner wants to be more obliging than you are. He wants to help. He is not a lawyer, so he is more helpful than most lawyers. He doesn't know. He can't tell, he said, without telephoning. Now you don't want him to telephone.

MR. HAMILL: No, I am not going to—my point is that Mr. Ernst has been charging that we have been disobeying a subpœna. Now we are not going to grant a favor in the face of a threat.

THE COURT: Well, he will withdraw the charge if you will let him telephone.

MR. ERNST: I have withdrawn the favor, so-called I have made a motion, your Honor.

THE COURT: If Mr. Ernst withdraws the charge will you let the Commissioner telephone?

MR. HAMILL: May I examine him, without leading him now?

THE COURT: Oh, surely.

MR. HAMILL: May I examine him?

By MR. HAMILL:

Q. How many letters regarding—and I don't want to lead him—how many letters regarding the subject matter of meetings do you think you have received—not do you think, but do you estimate you have received?

A. I couldn't tell you that. I paid no attention to them. As I got them, they were filed away. I handed them to my secretary to file them away. I couldn't tell you how many.

THE COURT: He can tell if you let him telephone his secretary. That is all he wants to do.

MR. HAMILL: All right. Let him telephone.

THE COURT: We will take a ten-minute recess. You can telephone then.

MR. HAMILL: If the court wants it, we will do it. And while I am ordinarily concessive and courteous to counsel, I don't think their conduct with the Commissioner warrants it, and I am doing it because the court asks it.

THE COURT: Mr. Ernst withdrew his charge.

MR. HAMILL: Sir? He withdrew his charge?

THE COURT: He withdrew his charge about your contempt.

MR. ERNST: My charge for contempt, you mean, yes.

MR. HAMILL: Yes.

MR. ERNST: Temporarily, temporarily.

MR. HAMILL: We are very much disturbed over that charge for contempt, yes.

THE COURT: It was not directed against you, Mr. Hamill.

MR. HAMILL: Yes.

MR. ERNST: If your Honor please——

THE COURT: He is going to telephone. We will take a ten-minute recess.

MR. ERNST: Yes, but let's find out what he is going to telephone for, so we will get over this hurdle. It is just too foolish.

THE COURT: You are going to telephone and find out if there are any more protests, is that right?

THE WITNESS: That is right.

MR. ERNST: In his office.

THE WITNESS: In my office.

MR. ERNST: And also, the witness having testified that some of them were in the Mayor's office——

MR. HERSHENSTEIN: No, he can't tell about that.

THE WITNESS: That is ridiculous. I can't say that.

THE COURT: No. I think that ought to be done directly.

THE WITNESS: I am not accountable for that. I am accountable for my own actions and protests.

MR. HAMILL: Mr. Hershenstein says that the Mayor's office has thousands and thousands of protests.

MR. HERSHENSTEIN: I have seen them. Now, what they might contain, I don't know.

THE COURT: You had better issue a subpœna for the other protests.

MR. ERNST: We are going to issue those, of course.

(At this point a short recess was taken.)

(After recess.)

Q. Your verdict, Mr. Director?
A. I am.
Q. Is what?
A. What's that? I have done what you requested.
Q. What is the verdict?
A. They will be over, I order them sent right here.
Q. That is, ordered them from your office.
A. Ordered them from my office.

MR. HERSHENSTEIN: May I state to the court—I said it to Mr. Ernst a minute ago—there are a number of protests that have been filed in the office of the Mayor which have been received in the first instance by the Commissioner of Public Safety. Those have been segregated and are on their way over, and Mr. Ernst wanted us to state approximately the number. I would say that there are about fifty or less. I don't think there is over that.

MR. ERNST: I understand that there will be added to the material that is on the way over now from your office not more than one hundred, that gives you latitude—additional so-called protests, against meetings.

MR. HERSHENSTEIN: Pardon me. I don't think you ought to limit it to that because among the papers which we have produced——

MR. ERNST: One hundred additional.

MR. HERSHENSTEIN: No, no, no. In addition to what Mr. Ernst has just described we have produced

two petitions here, if your Honor please; each petition your Honor will note from its size and bulk and pages contains thousands and thousands of individuals who have signed the petitions and protests to this meeting. There is one.

MR. ERNST: But we will call that one protest.

MR. HERSHENSTEIN: Well, I would like the court to know that, what that one protest means.

MR. ERNST: Oh, yes. That is only one protest, no matter how many signatures.

MR. HERSHENSTEIN: And here is another one.

MR. ERNST: That's right.

MR. HERSHENSTEIN: Let the record state what they are.

MR. ERNST: As I understand, there may be one hundred more which will come over from the Mayor's office which were originally received by Mr. Casey.

THE WITNESS: From the Mayor's office, from my office.

THE COURT: From both places.

THE WITNESS: From both places, yes.

MR. ERNST: No, I understand now that Mr. Casey is having brought over the balance from his office.

THE WITNESS: That's it. I told them to bring anything that's there.

THE COURT: You will get the balance from the Commissioner's office and from the Mayor's office some are coming too.

MR. HERSHENSTEIN: Yes.

MR. ERNST: And those I understand, your Honor please, will not exceed one hundred in number, defined

as a protest, no matter how many signatures, and then with the material from the Commissioner's office as well as the Mayor's office we will have had a complete response to the subpœna and no other protests.

MR. HERSHENSTEIN: As far as we can locate now.

THE WITNESS: Written. You are talking about written. I have had plenty of oral protests.

MR. HERSHENSTEIN: Will you explain, Mr. Casey, that the letters referred to which are a matter of record in the Mayor's office will not be available until tomorrow because there are so many of them they will have to be segregated?

MR. ERNST: That's right. I just want to know that the additional material which will come is up to one hundred from the Mayor's office.

MR. HERSHENSTEIN: That's right.

By MR. ERNST:

Q. Now, Mr. Casey, I ask you to look over these protests, eleven in number, and I ask you if any one of them is a protest indicating that the permit for the Civil Liberties Union meeting or the CIO meeting should not be granted and whether any one of them mentions the question of a permit for an outdoor meeting at all.

MR. HERSHENSTEIN: Well, as I understand, if your Honor please, what Mr. Ernest required were all the letters of protest in reference to these meetings or the subject matter in dispute. Now, Mr. Ernst——

MR. ERNST: Your Honor, I have simplified the matter, if you will let me proceed in my own way; I have simplified the matter by taking out from all of the protests every instrument that is dated before January 1, 1938. The permits were before the Commissioner during that interval and so I want to get fixed the protests

as to specific meeting permits of CIO or ACLU up to the period of January the first. That is the time during which he made his investigation and decided that the mob would make disorder.

MR. HERSHENSTEIN: Well, I think that the witness should have an opportunity to examine every piece of paper——

MR. ERNST: That's right.

MR. HERSHENSTEIN:—In this envelope he has produced. You are giving him a segregated number and saying "Is there anything there in reference to that matter?"

MR. ERNST: I am asking him if he finds anything there and then I will ask him to look over the others and find out if he finds anything after January first. Very simple.

A. Look at those two, Counselor (handing counsel papers).

Q. I showed you eleven purported protests and asked you how many of the eleven, all of them antedating January 1, 1938, specifically referred to the granting or denial of a permit for a meeting of the American Civil Liberties Union or the CIO?

A. Those three, I guess. The CIO are mentioned in them.

Q. Yes. So three of these related to permits. Now, Commissioner, I want to show you a bunch of letters, twelve letters dated around May 20, 1938, and ask you look them over and see if they were not copied from the same master letter, because the wording is either identical or substantially the same?

MR. HERSHENSTEIN: If your Honor please, I object to the question, whether they were copied from the same master letter. That may be a conclusion. They

may be alike. That is the only thing this witness can say.

THE COURT: Are they in the same language? Is that the point?

MR. ERNST: Verbatim, practically. He can answer it in any way he wants. I just wanted the admission that those eleven were virtually the same letter.

Q. Substantially the same letter?

A. They were written by different people and the wording is different.

MR. HERSHENSTEIN: A little louder, please.

A. The wording is different. Some of them are very brief; some of them mention names and others don't.

Q. My question was, are they substantially the same?

A. Practically.

Q. Practically.

MR. ERNST: I want to mark for identification twelve letters just referred to by the witness.

(Marked Exhibit P-18 for Identification.)

Q. Now, Commissioner, will you look over what is the balance of the papers that have been brought here as protests and see if you find a single protest that is dated before January 1, 1938.

Q. See if you find a single protest that is dated before January 1, 1938. Have you looked at these, Commissioner?

A. No, I haven't.

Q. Look at those few, just the date. I just want to know if it is before January first.

A. There is nothing there.

MR. ERNST: Now, your Honor please, I think I had better get this record clear. We have presented to the Commissioner Exhibit for Identification 18, all of which letters were dated around May 20th, and he has testi-

fied that they are substantially the same. I have shown to the Commissioner another batch of letters dated prior to January 1, eight in number, and asked him whether any of these alleged protests dated before January 1, 1938, related to protests as to meetings of the CIO or ACLU, and he indicated they did not, and I would like those marked for identification.

(Marked Exhibit P-19 for Identification.)

MR. ERNST: I have exhibited to the Commissioner all of the balance of the protests except for six documents and he has testified, as I understand it, that none of these bear a date prior to January 1, 1938, and I would like these marked for identification.

(Marked Exhibit P-20 for Identification.)

MR. ERNST: That leaves, if your Honor please, six protests antedating January 1, 1938, which is the period of deliberation and consideration on the permits. As to these six there are three of them which the Commissioner has pointed out to be as being undated and which may or may not have been written prior to January 1, 1938; is that right, Commissioner?

THE WITNESS: They are undated.

MR. ERNST: They are undated, so they may have been written before or after.

Q. Now I ask the Commissioner whether or not the protest of the Jersey City Real Estate Board is not dated December 30, 1937?

A. It is.

MR. ERNST: I want to mark this for identification.

(Marked Exhibit P-21 for Identification.)

Q. I show you a purported resolution from the president of the Community Center and ask you if that is not dated December 30, 1937?

A. That is right.

MR. ERNST: I would like to have that marked for identification.

(Marked Exhibit P-22 for Identification.)

Q. I show you a letter of American War Veterans of Italian extraction and ask you whether that is not dated December 29, 1937?

A. Yes, sir.

MR. ERNST: I would like that marked for identification.

(Marked P-23 for Identification.)

Q. I ask you, Commissioner, whether it is not a fact that on December 30, 1937 you wrote a letter refusing the permit for the CIO (showing to the witness)?

A. Yes, sir.

Q. And I ask you to let me know what the last date of the last letter which you wrote in respect to the application of the American Civil Liberties Union is?

A. December 22d, I think, from what is here.

Q. All right. Now, Commissioner, that leaves three letters undated out of all the material so far produced under the heading of protests, which are undated, and which might have been received before you rejected these permits, and I ask you to look over the letters and see in what respect any one of them in any specific reference mentions either the CIO or the American Civil Liberties Union in respect to a permit for a street meeting.

A. (The witness indicated a letter.)

MR. HERSHENSTEIN: Do you mind marking that letter denying the permit for the CIO, Mr. Ernst?

MR. ERNST: I am going to introduce it in evidence. I am going to introduce all those in evidence.

MR. HERSHENSTEIN: Now, what is the question?

Q. (Pending question read by the reporter.) Your answer is that one of them does?

A. Yes.

Q. And that is the Hudson County Post Number Two letter?

MR. ERNST: I want to mark that for identification.

(Marked P-24 for Identification.)

MR. ERNST: I would like to also mark for identification the other two undated letters which, like the last exhibit for identification, may have been received before or after January 1, 1938, and which the witness says do not specifically relate to the applications of permits of CIO and the American Civil Liberties Union.

(Marked Exhibit P-25 for Identification.)

MR. ERNST: I would like to offer in evidence now Exhibit P-12, previously offered and marked for identification.

(Received and marked Exhibit P-12.)

MR. ERNST: I would like to offer in evidence Exhibit P-13 for identification.

(Received and marked Exhibit P-13 in evidence.)

MR. HERSHENSTEIN: Is P-13 CIO?

MR. ERNST: P-13 being the correspondence in respect to the application for the CIO and P-12 being correspondence in respect to the ACLU application.

Q. Now, Director, just one more question. I have shown you in batches all of the purported protests. We have broken them down by dates and by reference to meetings. As I understand your testimony there is only one letter dated before December 30th, because the application was refused on the 30th, which specifically relates to CIO or Civil Liberties Union applications for permits by reference to those organizations or permits; is that right?

A. That's right.

MR. ERNST: Now, if your Honor please, I would like to have the Court impound the protests overnight. I understand——

THE COURT: All the records are kept here as soon as they are either offered in evidence or marked for identification.

MR. ERNST: They will be kept in Court, that is all right.

THE COURT: In the clerk's safe.

MR. ERNST: The difficulty is that the documents contain several pages; not each page has been marked for identification and if they are to be out of the court room we ought to mark each page.

THE COURT: They will be kept in the clerk's safe.

MR. HERSHENSTEIN: I shall want to examine them, if your Honor please.

THE COURT: You can examine them here; you cannot take them away.

MR. ERNST: I would like to offer in evidence the telegram and correspondence in respect to application for permit for the Princeton debating society for Senator William E. Borah, consisting of telegram and two letters.

(Received and marked Exhibit P-16.)

THE COURT: We will adjourn now until 10:30.

MR. ERNST: May I make one other offer and I am finished offering in evidence. I would like to offer in evidence material "Pawnbrokers' Descriptive Sheets" marked P-15 for identification.

(Received and marked Exhibit P-15 in evidence.)

(At this point an adjournment was taken to Wednesday, June 8, 1938, at 10:30 A. M.)

Wednesday, June 8, 1938.

Case continued.

Appearances as before.

Also JOHN A. MATTHEWS, Esq., for the defendants.

THE COURT: Are you appearing in this case, Mr. Matthews?

MR. MATTHEWS: Yes, your Honor. The record may indicate that I am associated as counsel in the case.

MR. ERNST: Your Honor, please, I would like to inquire from counsel for the defendants if Mr. Glavin will be in court today.

MR. HAMILL: I am glad you did it and I am all prepared to answer it and say that much as it will shock you for me to destroy this important incident to your publicity move, Judge Glavin is busy in chambers but he will be out here any time you want him and if you want him now, shall I send for him now, and if so he will be out here as fast as improved transportation will take him here.

MR. ERNST: Thank you very much. I will let you know when we want him.

DANIEL CASEY, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. ERNST:

Q. Mr. Casey, in your testimony you mentioned something about a memorandum book. I can show you in your testimony the reference you made to a memorandum book. I just want to make sure that the memorandum book you refer to is in evidence here somewhere as being part of the papers.

A. I referred to memorandum books——

MR. HERSHENSTEIN: Speak up.

A. (Continuing.) —at headquarters. They are not here. I told you that there are several of them. I couldn't tell you just how many.

Q. What do they contain, just generally?

A. They contain the orders from headquarters to the precinct, allowing meetings on different corners.

Q. They have nothing to do with——

A. With my office, no.

Q. They have nothing to do with the basic allowance or disallowance of a permit?

A. No, they haven't.

Q. And these are merely records that follow after you have allowed the meeting?

A. Yes.

Q. Mr. Hershenstein has handed me seven additional documents, being the additional protests which were sent for yesterday. Have you examined these?

A. No, I haven't.

Q. I would like you to look them over and tell me if any one of them has a date that precedes January 1, 1938. There is one more here (handing to the witness).

A. No.

Q. Now, Commissioner, will you look through and see if any one of these protests is a protest against the granting of a permit for a CIO or a Civil Liberties Union meeting.

A. Here is two of them.

Q. Now, of the seven, Commissioner, I understand that five, all of them dated after January 1, 1938,—not a one relates to a specific suggestion or request to you to not allow a permit for speaking by the CIO or American Civil Liberties Union.

A. That's right.

MR. ERNST: I want these marked for identification, five instruments.

(Marked Exhibit P-26 for identification.)

A. Here is two, Counselor.

Q. Now, Commissioner, I understand there are two left where you indicate that you think that those two refer to the CIO and the Civil Liberties Union.

A. CIO.

Q. CIO, both of them?

A. No, not both of them, just CIO.

Q. No, but both of the documents?

A. CIO.

Q. Now, the one here that has a resolution signed by Robert Lynch refers to CIO in that Jerry O'Connell is said to be a leader of the CIO, is that right?

A. Yes.

Q. Did you check up to see whether Jerry O'Connell had any connection whatsoever with the CIO?

A. I did not.

Q. You did not. So that just on the face of this you would say that this instrument relates to the CIO because the writer said that Jerry O'Connell was a leader of it?

A. Well, that's what it states.

Q. In any event you did not have this in your possession before you rejected the application of the CIO? You recall that was rejected in December.

A. No, I didn't.

MR. ERNST: I want to mark this letter for identification.

(Marked Exhibit P-27 for identification.)

Q. The other letter, Commissioner, is dated May 21st and is signed "A citizen" and it relates to John L. Lewis, is that right?

A. Right.

Q. It has no reference, however, to denial of a speaking permit for John L. Lewis?

A. No.

Q. Is that right?

A. No.

Q. That is not right?

A. No, it doesn't, I say.

Q. It doesn't; that's right.

MR. ERNST: I want to mark this letter for identification.

(Marked Exhibit P-28 for identification.)

Q. I understand that this covers all of the letters and resolutions of protest which you had in your files or available to you?

A. Right.

Q. Did you have letters coming from the public generally disapproving your action in respect to your application for permits or otherwise?

A. No, sir, not to my knowledge that I can remember offhand.

Q. Offhand you would say you never got a single letter——

A. I haven't seen any.

Q. What?

A. I haven't seen any.

Q. You haven't seen any. Do you recall seeing a letter addressed by twenty-six United States Congressmen?

A. To me?

Q. Addressed to you or Frank Hague.

A. I am talking about myself, I haven't received it.

Q. Commissioner, you know that most of the protests that you have examined were addressed to Frank Hague and not to you?

A. Some of them were.

Q. Quite a number of them.

A. They get mixed up, I think, by coming out here.

Q. What do you mean, they got mixed up?

A. Well, I think the orders were to bring them out from the Mayor's office and my office.

Q. Oh, I see.

THE COURT: Are there some additional ones here, Mr. Hamill? Are there some additional protests here, do you know?

MR. ERNST: They are all in evidence, your Honor.

THE COURT: They are——

THE WITNESS: They should have been here this morning, from what I understand, your Honor.

THE COURT: That is what I meant.

MR. HAMILL: There are other protests to come here, your Honor. Those are the ones Mr. Hershenstein talked about yesterday. I don't know whether they are here now or not.

THE COURT: As we used to say in the artillery, they are on their way, is that right?

MR. HAMILL: Yes.

MR. ERNST: Well, may I find out from Mr. Hershenstein, is this all or will there be some more?

MR. HERSHENSTEIN: I have, if your Honor please, or there will be here this morning, thousands of letters which I referred to yesterday which the Mayor has received commending his position.

THE COURT: I am right then in saying they are on the way.

MR. HERSHENSTEIN: They are here.

MR. ERNST: They are here?

MR. HERSHENSTEIN: I mean they will be here.

MR. ERNST: Today?

MR. HERSHENSTEIN: Oh, yes.

Q. But the ones that you have been examined about, Commissioner, are the only ones that came to your office?

A. Yes, sir.

Q. And as far as you know you received no communications condemning your position in relation to the denial of permits, none at all?

A. No, sir, not to the best of my recollection.

Q. Who in your office would receive those in the first instance it they had come in?

A. My secretary would receive them and would open the letters and lay them on my desk.

Q. Now, have you ever allowed a single meeting since you have held your present position where you have received a single written protest?

A. I don't remember of any.

Q. If I show you a list of the meetings for which permits have been granted will that help you?

A. It might.

Q. I show you Exhibits P-10 and P-11 which you testified was the all-inclusive list of permits granted and I ask you again whether in any single case where a permit has been granted had you received a letter of protest.

MR. HERSHENSTEIN: Of course, you know, Mr. Ernst, that the vast majority of these permits were granted before Director Casey became Commissioner.

MR. ERNST: I asked him during his term of office; you didn't get it.

A. Not to my knowledge.

Q. Now, do I understand you to testify that you did not investigate the protests, in other words, to find out whether the signatures were genuine or duplicated or doctored.

A. I didn't investigate it, no, sir. I took it on its face value.

Q. And you relied to a considerable extent or to some extent on the protests to form your judgment that there would be a disturbance or a riot?

A. Right.

Q. Now, would you have modified your judgment, if, in a so-called protest containing hundreds of alleged signa-

tures of real people, you had known that the same signature appeared more than once in the same protest, would that have changed your judgment about the validity?

A. No, it wouldn't, no, sir.

Q. Wouldn't have had any effect. Now, if I show you, for example, here that F. or S. Walter Brannagan—does anybody know what is his first initial, F or S?

A. Who is it?

Q. S. Walter Brannagan.

THE COURT: Is he a signer?

MR. ERNST: He is a member of the Legislature or was.

Q. If I show you a name with some initial I can't make out, Walter Brannagan, 146 Clark Street, three times in the same protest, and if you had known that that name repeated itself three times in the one protest, would you not have given less weight to the whole protest or would it have made any difference to you?

THE COURT: Is the handwriting the same?

MR. HAMILL: I object to that. The question——

Q. I will leave it to the witness.

MR. HAMILL:——ought to be "Would you have considered that fact that it appeared three times?" If what counsel says is so would you have considered it?"

THE COURT: Yes. Is the handwriting the same?

MR. ERNST: Repeat my question, please.

MR. HAMILL: I object to the question.

THE COURT: Amend it to say "Would you have given weight to it?"

(Question repeated by the reporter.)

THE COURT: I just struck out the "less."

MR. ERNST: I will change the question as the court suggests and ask the Commissioner——

Q. Are those three signatures the same as far as you can see?

THE COURT: Do they seem to be in the same handwriting, Mr. Casey?

MR HAMILL: Why not hand them to the Court since the Court is passing on the fact? I mean what good will it do for the witness to say unless he is handwriting expert?

THE WITNESS: Here is one of them (indicating).

MR. ERNST: If your Honor please it seems to me that it makes no difference whether they are in the same handwriting. They purport to identify the same person, and even if written in different handwritings the most that could he said is that the Commissioner should have been doubly suspicious because then there might have been a forgery in addition.

MR. HAMILL: That's your conclusion. Why should he be doubly suspicious? The man himself might have signed it deliberately three times——

THE COURT: It looks as if he had signed it three times.

MR. HAMILL: What harm would that have been?

A. Yes, he signed it three times.

Q. He did.

A. It looks like his signature to me. I am not a handwriting expert.

Q. Now if you had known that fact at the time you were considering this protest for any purpose whatsoever would you have given some weight to that fact that the signature appeared three times?

A. Well, there is different ways you can look at it. Whoever handed the petition—there might have been se-

eral with petitions, and he was asked by several people to sign it; like any other man; and they are all put into the one petition and sent in.

Q. Yes.

A. They are not on the same sheet.

Q. That is right. Now there is no caption on each sheet telling what people are signing, is there?

A. There is not, no.

Q. So that the sheets no doubt were handed around separately for signature?

A. Well, that's the way I think it was. That's my opinion. I might be wrong.

Q. That's right. Now, as a matter of fact,——

Mr. Hamill: I think the opinion of counsel and the witness's ought both to be stricken out. Neither one of them knows what was done.

Mr. Ernst: I will ask him.

Q. Don't you know as a matter of fact that the police of Jersey City took these papers around?

A. The police?

Q. The police.

A. That is a ridiculous question.

Q. Do you——

A. Ridiculous. I know it is emphatically no. That's my answer.

Q. That's your answer.

A. Not with my sanction or anybody connected with the police department.

Q. Oh, now. Let's get this answer straight. I didn't ask you about sanction. I just wanted——

Mr. Hershenstein: Well, he said no, and in addition he said it wasn't with the sanction——

Mr. Ernst: I just want to make clear that it has an addition, yes, sir.

Q. I take it you mean that you don't know that the police did it, and in any event, if they did it it was not with your sanction?

A. Well, that is right.

MR. HAMILL: No, he means more. He means that the police absolutely did not do it. That's what he said. And if they had done it, it would have been done without his sanction.

MR. ERNST: No, he can't testify they didn't. All he can testify to is that he doesn't know about it. He can't testify that they didn't do it.

MR. HERSHENSTEIN: He has testified that is wasn't done with his sanction.

MR. ERNST: That's right.

Q. Let me ask you again: if you had seen this instrument and really investigated it and found one name three times,——

MR. HAMILL: Now, excuse me a minute. I move that that be stricken out unless counsel will prove that the police did do it.

MR. ERNST: I am not going to talk about police any more.

MR. HAMILL: Then I move that that be stricken out.

MR. ERNST: You don't know what the question is going to be.

MR. HAMILL: I am talking about the question that is in, about the police distributing these; unless you are prepared to prove that they did that, it should not be in the record.

MR. ERNST: We intend, your Honor, to prove through other witnesses, the methods by which these

instruments and others were distributed to the police and other officeholders. I imagine that Mr. Casey knew about it, and would so testify.

MR. HAMILL: And you are going to prove all that?

MR. ERNST: We intend to produce their testimony at the proper time.

THE COURT: As the record now stands, the Commissioner says that that was not done.

THE WITNESS: Not done with my sanction; I never knew anything about it.

Q. Now, as to the question where I was interrupted, I ask you that if you in examining this document for any purpose within your province had come across in your examination the fact that at least one signature was there three times, would you not in the pursuit of what you call good common sense, have examined the entire document further to see how many other names are duplicated?

A. I just looked over it roughly. It was like every other protest that comes in. I didn't go through it with a fine tooth comb.

Q. I know that you didn't but if——

A. I just looked at it the same as anybody else would, and filed it away.

Q. That is right. And if in looking it over roughly, somebody had found out that some signatures were duplicated, you would have looked for other duplications, wouldn't you?

A. I didn't even look for any duplications.

Q. So it wouldn't have made any difference to you if there had been dozens of duplications?

A. Not in the least.

Q. That is right. And the fact that there was no caption at the top of each page made no difference to you?

A. No difference to me at all.

Q. Commissioner, it is a crime in Jersey City to disturb a public meeting, isn't it?

(No answer.)

Q. To break up a public meeting, to create a disturbance at a public meeting?

MR. HAMILL: I object to that. It is a legal question. It is disorderly conduct, to begin with.

MR. ERNST: That's enough.

MR. HAMILL: If that is what you mean.

MR. ERNST: That's what I mean.

Q. Commissioner, it is disorderly conduct?

A. Right.

Q. Right? Do you know——

MR. HAMILL: To break up a meeting anywhere in this country, so far as I know.

Q. Do you know if there has been brought to your attention through your Chief of Police, a single instance of an arrest during the past year of any person for creating a disturbance at a public meeting?

A. No, there has not.

Q. Did you issue any permits for the gatherings in Journal Square at the time that Norman Thomas was to speak there, and Jerry O'Connell was to speak there? Those are two different dates.

A. I granted no permit, no, sir.

Q. There was a large public assemblage in Journal Square.

A. I granted——

Q. What?

A. I granted a permit, I think, for a parade of the veterans. I don't know whether it was for the Thomas or the O'Connell.

Q. Meeting.

A. Meeting.

Q. But as to the assemblages in Journal Square you granted no permits?

A. I did not.

Q. And those assemblages, take them either one you want first, included, would you say, hundreds of people or thousands?

A. There was thousands there.

Q. Were you there in each case?

A. I was there at the O'Connell—O'Connell didn't come over that night.

Q. But you were there at the assemblage?

A. I was there that night.

Q. And there was a large assemblage there without a permit?

A. There was. The veterans, as I said, had a permit to come there to parade right there.

Q. In one case?

A. That's right.

Q. Now, as to the Pershing Square or Pershing Park, whatever it is, meeting there was a permit granted for that gathering?

A. There was not.

Q. There was no permit granted for a parade either?

A. No, sir.

Q. And there were no arrests made for having a meeting without a permit?

A. There was not.

Q. There was no protest made by you or your chief of police for unlawful assemblage or for gathering without a permit?

A. A park is a public place, anybody can go in there.

Q. And so everybody can go into the park and the only time a permit is needed is if a man starts to speak?

A. That's it.

Q. So that if everybody goes to the park without a speaker you have no power to stop the assemblage?

A. I have not.

Q. It may be that if there were a gathering of people in a park there might nevertheless be disorder?

A. There might.

Q. And disturbance. But you would have no right to stop it in advance of the disturbance as you would in case there were a speaker?

A. Well, now, that is a very funny question, Counselor. The park is policed at all times; there is always, I think, a man assigned to Pershing Field. There is crowds there, baseball games and everything else going on there. There is liable to be a little trouble there the same as any place else. That is squashed.

Q. That's right. But if a thousand people meet there and nobody gets up to make a speech you have no power as to issuing a permit for the gathering or not?

A. I have not, no.

Q. And there might be disorder arise out of such gatherings even without a speaker?

A. Well, there is liable to be disorders happen anywhere.

Q. Yes.

A. You or I might get together and there might be disorder.

Q. So the CIO could get together and not ask for a permit if thousands of its members should gather at Pershing Field without a speaker?

MR. HAMILL: I object to that. They might announce it in the press. They certainly wouldn't ask anybody's permission to do that if that is what you mean.

MR. ERNST: I am just asking whether——

(Question repeated by the reporter.)

MR. HAMILL: Make an announcement—they could make that announcement.

THE COURT: You mean under the ordinance?

MR. ERNST: Let me rephrase it to suit Mr. Hamill.

THE COURT: Yes.

Q. If the CIO announced in the press and through the distribution of circulars on the streets of Jersey City that all of its members in Jersey City should meet at Pershing Field and if as a result twenty thousand or thirty thousand CIO members in Jersey City met in Pershing Field, and if in addition there was no speaker, either announced or attempted to make a speech at Pershing Field, you would be powerless in respect to issuing or denying a permit for such meeting?

MR. HAMILL: I object, that is a legal conclusion.

Q. Let the witness answer.

A. That is a very technical question.

Q. That's right, a technical question.

A. In a case of that kind I would consult the law department on it and see what my rights are.

MR. HAMILL: I wonder if there is anyone in the court room who can answer that. I object to the question; it is a technical question.

MR. ERNST: Your Honor please, I want to show the absurdity of the Jersey City, Frank Hague, position in that, if twenty thousand people gathered with no speaker they are going to be forced to the conclusion that that gathering can take place.

MR. HAMILL: Well, here——

MR. ERNST: May I finish?

MR. HAMILL: Excuse me, sir.

MR. ERNST: Even though twenty thousand people might congregate, according to what the Commissioner calls his good common sense, a greater danger of disturbance might exist than if a little debating society

from Princeton invited Borah to speak somewhere else in town, but it would be powerless to prevent the meeting in advance, they would have to wait until an outbreak.

THE COURT: Does the ordiance say——

MR. HAMILL: The ordinance says "No public parades or public assembly." Of course, he would have a right to do it. Your Honor will construe that ordinance for us. You construe it for us (to Mr. Ernst).

MR. ERNST: Is that your position?

MR. HAMILL: It says "No public assembly." Is it your contention——

MR. ERNST: Let's understand each other. Give me your statement.

MR. HAMILL: I am going to give you my statement.

MR. ERNST: I am satisfied with it as it is.

MR. HAMILL: Thanks. You don't know what it is yet. Is it your contention that a mob can gather—or let me withdraw the word "mob"—that there can be a congregation of people bent on promoting violence and then, of course, constituting a mob, and that although the Director of Public Safety knows this in advance he cannot stop it?

MR. ERNST: I have not mentioned violence, I am making no contention, your Honor; I am conducting an inquiry of a witness. The witness has testified that if thousands of people assemble——

MR. HAMILL: You are not answering me.

MR. ERNST: —as they did assemble on three occasions, they require no permit, he has so said; on two occasions he was there—on one occasion we have to draw a little parenthesis because he gave a permit for the parade, but on two occasions thousands of people

assembled. Now, I just want to examine the witness as the law enforcement agent as to whether or not that is a public assemblage under the Act and whether if twenty thousand CIO people came out to another part of town that would not be a public assemblage under the Act and wherein lies his power of discrimination.

MR. HAMILL: I object.

MR. ERNST: Perfectly clear field of inquiry.

THE COURT: It must be a public assembly.

MR. HAMILL: Suppose they gather at a ballgame, that is a public assembly.

MR. ERNST: I didn't ask a ballgame.

MR. HAMILL: Suppose they gather to see an open air play; that is a public assembly. Of course, you have no right to stop a meeting of that kind.

THE COURT: What does the ordinance say exactly again?

MR. ERNST: The ordinance, your Honor please, says "From and after the passage of this ordinance no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety." This witness has testified that to his knowledge there were two large assemblages, both of which he attended, or at least one of which he attended, so he knows of his own knowledge. He testified there was no permit. Now, I am asking him——

THE WITNESS: I will clarify that for you.

MR. HAMILL: Wait a minute.

MR. ERNST: I would like the witness to clarify it.

THE COURT: Go ahead.

MR. HAMILL: Now, here is what I want to say: Is it your contention that this ordinance covers, for instance, an audience or gathering who are gong to the movies?

MR. ERNST: I have no contention, Mr. Hamill; I have got a reluctant adversary witness on the stand who does not require any protection, and I think if you will allow Mr. Casey to do so he can handle himself, he is willing to answer the question. My questions may not be always clear to him but he has always come around and gotten what is in my mind and has answered frankly and honestly. I have no contention at all.

MR. HAMILL: That remark should not be let pass without a repudiation. The witness has answered every question put to him. Your Honor knows that what are now being posed to the witness are questions of a highly technical nature. One of them was to me so technical that I wondered if any lawyer in the court room could answer it, including the interrogator, and the witness is not reluctant or he is not recalcitrant or he is not stubborn and he is concealing nothing and he is answering legal questions as best he can, although legal questions should not be put to him.

THE COURT: I think the witness seems a little more anxious to answer the questions than his counsel does to have him.

MR. HAMILL: I think so too. If I were in this place I wouldn't answer them.

MR. ERNST: If I may cut it short, your Honor.

Q. Commissioner, did you see an advertisement appearing in the Jersey *Observer*, a full page ad, Saturday, May 7, 1938?

A. (No answer.)

Q. You can see the ad.

A. I can see the ad. I might have seen it.

Q. Yes.

A. I might have paid no attention to it. I couldn't say if I did or didn't.

Q. All right. Now you know, as a matter of fact, that there was a large assemblage in Journal Square the evening of May 7, 1938?

A. There was.

Q. There was. Now there was no permit issued for that assemblage?

A. There was a permit denied for a speaker that was going to go there, and that was a protest, people going there to protest him speaking.

Q. Now you say there was a protest——

A. Which they have got a perfect right to do. They are citizens of the city.

Q. That is right.

A. They can go any place they like.

Q. Now this ad calls for, and I am quoting at the corner, you can read it with me, "Friends of organized labor assemble with us tonight at Journal Square at seven thirty P. M."

Is that right?

A. That is right.

Q. So that there was a large gathering and assemblage in Journal Square that night?

A. There was.

Q. As a result in part of this call?

A. As a result, I would say, of a prominent speaker going to be there that they objected to.

Q. And you issued no permit, I take it, for that assemblage.

A. I did not.

Q. In part because people of Jersey City have a right to assemble to protest?

A. They have.

Q. Now have they got a right to protest against Norman Thomas? They have, haven't they?

A. They have got a right to protest against anybody that they don't want in the city, for the welfare of the city.

Q. Have they a right——

A. For the welfare of the citizens of the city.

Q. That's right. And have the people a right to assemble at Journal Square to protest against Frank Hague?

A. They have got a right to protest against anybody they feel like, anybody that is going to talk, no matter who it is.

Q. I didn't ask you whether they have a right to protest I asked you whether they have a right to assemble to protest against Frank Hague?

MR. HAMILL: I object. I object. It is puerile and ridiculous. Have the people of America a right to protest against any of its citizens? Now, I don't know: it is news to every American that they can. But counsel seems to want light on that matter.

MR. ERNST: I need it.

MR. HAMILL: Well, that's deplorable.

MR. ERNST: I need it very badly in this situation. I am faced, your Honor, with——

THE COURT: I think the witness said that they had a right.

MR. ERNST: Had a right to protest.

THE WITNESS: A person has the right to protest if they want to.

Q. Now have they the right to assemble to protest against Frank Hague in Journal Square without getting a permit, under the ordinance?

A. If Frank Hague is going to speak there and has a permit, if you will explain it in my way——

Q. That's right. I want you to explain it.

A. And there is a meeting of the veterans where they are going there and going to protest against Frank Hague

talking or anybody else, it is my duty as head of the police department to protect Frank Hague, and if I think violence is to be committed there, to get Frank Hague out of there and protect him to the best of my ability and the best of the ability of the police department.

Q. Now, Commissioner, I didn't ask a single thing about getting people out.

A. Well, I am just telling you what my duty is.

Q. That's right, but I didn't ask about it and I am not concerned any more.

A. I think you ought to let me tell it.

Q. Yes.

A. How I should handle it.

Q. No, your counsel can ask you that.

A. That's all right. I think I can answer it.

Q. But listen, Casey, I am asking something very different. I am asking about whether if Frank Hague is going to speak in Journal Square, for example, have the CIO workers the right to go to the meeting to protest?

A. They can go there and protest, certainly. Why not?

Q. Have they a right?

A. They have done it. They have been doing it.

Q. If it were announced that Frank Hague were to speak there, have the CIO workers the right to advertise to their members and the public to come to Journal Square to protest, and to assemble there——

MR. HAMILL: I object.

MR. ERNST: Let me finish my sentence. At least courtesy ought to apply over here.

MR. HAMILL: I know, providing there isn't too much prolixity.

Q. (Continuing.) —without asking you for a permit?

MR. HAMILL: I object. Have they a right to advertise? Do you mean in the newspapers?

MR. ERNST: You can ask him on cross-examination.

MR. HAMILL: I object to the question, have they a right to advertise. That's a matter the newspapers have to answer. He can't answer that.

THE COURT: There is nothing in the ordinance forbidding it, that is the fact, isn't it?

MR. HAMILL: No, there is nothing in the ordinance forbidding advertising that I know of.

MR. ERNST: He can say that they have a right.

MR. HAMILL: Well, if it is a legal question, can't we all say it?

MR. ERNST: This is the enforcement officer under an ordinance. He says he uses common sense. I want to know what his decision is on common sense. He says he doesn't consult counsel.

MR. HAMILL: Well, he couudn't use his common sense on something beyond his control, even if he wanted it.

MR. ERNST: No, I would like——

MR. HAMILL: It is up to the newspapers to say whether they will carry an advertisement or not, and all the common or uncommon sense in the world wouldn't help him to allow it to go in or keep it out.

MR. ERNST: I didn't ask you whether the newspapers would run the ad. I would like my question read, your Honor.

THE COURT: Yes, read it.

(Pending question read.)

A. Advertising, I got nothing to do with it. I am not interested in advertising.

Q. What is the answer?

A. I am not interested in advertising. It is a technical question, and it is not a question that I can answer, how

they advertise or what they do. That has got nothing to do with me, as head of the police department.

Q. That is a satisfactory answer. I take it that you as the head of the police department would have no power to prevent their putting in an ad?

A. I couldn't stop them from doing it.

Q. That's right. Now, how about the other part of the question, the right for assembly. Read the question again and only answer it, Mr. Witness, if you please, in respect to the assemblage.

Q. (Question reread by the reporter.)

A. They got a right to do it without asking me for a permit, to go there to protest.

Q. Now have they the right to assemble for the purpose of a protest without asking for a permit?

A. Well, there must be a reason for them going there. I would have to know what it is and all about it before I would consider it and what it is.

Q. In other words, if they give a reason, which in your common sense judgment, or whatever the phrase was you used, satisfies you, you would allow them to assemble, is that right?

A. Well, I—that's something that I couldn't give a definite answer on. As I told you yesterday, when that case presents itself to me and I know the facts, I act accordingly, and I will act accordingly.

Q. In connection with the facts of the assemblage on May 7th, to protest, you did not issue a permit?

A. I did not.

Q. You knew the facts, is that right?

A. That's right.

Q. And you did not think that a permit was needed for that assemblage?

A. I did not.

Q. It isn't that you granted the permit?

A. I didn't grant the permit.

Q. You just didn't think a permit was needed?

A. I refused a permit to the speaker that was there. Naturally crowds went there to protest.

Q. Now, would people——

A. Journal Square being a public place, they had a perfect right to go there, the citizens of the city.

Q. That's right. Now there is no separate park or space set aside for meetings, generally, is there?

A. There is not.

Q. Like Hyde Park or Union Square or Columbus Circle?

A. There is not.

Q. Nothing like that. Now the reason why, as I understand you, you permitted the assemblage on the night of May 7th in Journal Square was because the assemblage was being conducted in order to protest against a speaker?

A. That is it.

Q. Now, would you say that the assemblage could also have been conducted without a permit if it were to have a protest, even though there were to be no speaker?

A. I wouldn't allow it.

Q. You wouldn't allow it. In other words, a large number of people may gather to protest against a speaker in Journal Square, but may not gather without a permit if they are not to protest against a speaker, is that right?

A. Traffic regulations would prohibit any time without notifying anybody about anybody going there. By the way, you are putting that question to me, any time that anybody would feel like going and going up to Journal Square or any other street in the city, without paying any attention to laws or ordinances, have a meeting there, draw a crowd, I should allow that. That's the way that I construe the question that you put to me.

Q. Let me try it again.

A. I might be wrong.

Q. No, you misconstrued my question, Commissioner. Let me try it again and see if we agree.

Q. Do you agree that on May 7th you knew there would be a vast assemblage of people in Journal Square to pro-

test against the speakers who had applied for a permit, is that right?

A. (No answer.)

Q. You looked into the matter and you found that that assemblage was entirely lawful without a permit?

A. I did.

Q. Now I ask you, would the same thousands of people be permitted to come there to a meeting for protest, even if there had been no proposed speaker on May 7th?

A. I wouldn't allow it because they had nothing to protest against.

Q. Now, what if they had gone there as a demonstration protest against Frank Hague and Commissioner Casey? You wouldn't allow it?

A. If there was no speakers going to be there, no.

Q. I take it from your other testimony that the only reason on which you disallow assemblages is fear of riot and disorder?

A. That is it.

Q. Now I take it that you now say there is greater danger of disorder if there is to be no speaker on the particular occasion against whom they are protesting?

A. I say——

Q. Than if they assembled on an occasion when there was no speaker, isn't that the position you are now in?

A. I say where an organization, all members that are going there or any place else, you very seldom have any bother with them. It is where the papers of the city and the papers of the state and country talk about a prominent —well, they publish about a prominent speaker going to appear at a certain street in a certain city and the people in that city object to that speaker, don't want him to talk there, it is my duty as head of the police department not to allow that person to speak where it will cause riot, bloodshed and murder, maybe.

Q. Now, Commissioner——

A. Without he having a permit.

Q. Now, Commissioner——

A. And as far as gatherings, they have parades, crowds there, different organizations, different organizations have meetings in different places. There is never any bother. And a case of that kind, it is up to me as the head of the police department to decide whether I will allow that gathering or not.

Q. Now, Commissioner, let me get back to my question. Let me try once more. I think it is simple and if you will just be patient and listen I think you will get the point I want.

I understand that you say that if there is a possibility of a speaker in Journal Square, thousands of people may gather in Journal Square to protest against the speaker, and that you, on May 7th, came to the conclusion that there was no danger of a disturbance because of the gathering of thousands in a protest, and that you must preserve the right of the people to protest against a speaker?

A. Yes.

Q. Is that right?

A. Right.

Q. Now, all I want to know is, may those same thousands of people also assemble at Jersey City at the same place as the first thousands, to protest against Frank Hague, even though there is to be no speaker, and you say no, is that right?

A. I say no.

Q. All right. Now I ask you, number three, isn't the distinction in your mind between those two cases due to the fact that in the first case, where people come to protest against a speaker, that there is no danger of disturbance or violence and riot, but if they go there in thousands to assemble, to protest against a Mayor, or any other human being, without a speaker, there is a danger of violence? Isn't that the only case in which you could make the distinction under the statute, under the ordinance?

MR. HAMILL: I didn't catch those last words.

MR. ERNST: Isn't that the only basis on which you can operate under the ordinance? Isn't that it only direction?

MR. HAMILL: I object to that, I object to that. I will let counsel himself answer that question. This isn't fair to put a lay witness on the stand and address legal questions to him. Now, I would like the Court to listen again, as it did before, to that question and to pass on it.

THE COURT: I heard it. Would it be fair to ask you, Mr. Hamill, whether Commissioner Casey has been given the benefit of some written instructions from your law department as to the interpretation of what I agree with you is a rather difficult ordinance to interpret?

MR. HAMILL: That I don't know, for this reason——

MR. ERNST: I asked the witness; he said no.

MR. HAMILL: Let me answer the Court's question.

THE COURT: I agree it would be very hard for a layman to answer.

THE WITNESS: I did say that it is a technical question.

MR. HAMILL: I say I don't know whether there are written opinions or not for this reason, that first of all the opinions may have been oral; secondly, the opinions were not only given by the corporation counsel, they can be given by at least four men or five in the law department, so that I want to be understood as not evading the Court's question, but as answering it squarely and telling what I know.

THE COURT: I mean this ordinance uses rather vague words.

MR. HAMILL: Sir?

THE COURT: This ordinance uses rather vague words. Maybe that is necessary, but still a layman, I

should think, would be rather puzzled, or even as you said a minute ago, a lawyer.

MR. HAMILL: A lawyer would be puzzled to answer the questions being put.

THE COURT: But a layman would have to have some guidance, I should think.

MR. HAMILL: They are questions which never arose in actual performance of duty, these hypothetical questions, nor are they in issue. They would be questions to test the legal ability of an expert, not questions to put to a director of public safety.

THE COURT: Can I have that last question repeated?

MR. ERNST: I can reframe it, your Honor.

Q. You have testified that thousands of people may go to Journal Square and assemble there in order to protest against a man who is announced as a speaker?

MR. HAMILL: I don't know that he said that; I don't think——

Q. Didn't you say that, Mr. Casey?
A. Yes, I did say it.

MR. HAMILL: I am not sure that anyone has the right to go there and protest.

MR. ERNST: Casey and I understand each other. He said it and there is no question about it.

MR. HAMILL: I know, but your understanding doesn't satisfy me.

MR. ERNST: Mr. Casey says he said it.

MR. HAMILL: I know, "Will you walk into my parlor said the spider to the fly." Your understanding him is not for the benefit of Casey.

Q. Mr. Casey, is that your understanding of the position, that people can assemble in Journal Square as they did on the night of May 7?

A. They can, yes.

Q. In order to protest and they don't need a permit?

A. That's the way I look at it, that is my opinion. I might be wrong.

Q. That's right. Now, then, I understand you to say they could not assemble without a permit in Journal Square for the purpose of a protest where there was no proposed speaker, is that right?

MR. HERSHENSTEIN: Isn't that the same question just put in another way?

MR. ERNST: Not at all. The distinction is—let me get it across, and that is just the trouble, that you have never understood it and neither has Mr. Hamill.

(Question repeated by the reporter.)

A. That's right.

Q. Now, I ask you, Commissioner, the basis of your denying an assemblage permit is the danger of violence?

A. That's right.

Q. Now, I ask you do not these series of questions mean that in administering the ordinance, a difficult ordinance, you have come to the conclusion that people may not assemble to protest if there is to be no speaker but they may assemble to protest if there is to be a speaker?

MR. HAMILL: Could I hear that read again?

(Question repeated by the reporter.)

MR. HAMILL: I object, it is a legal question. This man decides in each particular instance, he doesn't come to any set conclusion. He decides in each particular instance wehther there shall be a riot, disorder, disturbance or disorderly assemblage.

MR. ERNST: He has testified, your Honor, already in administering the department that under certain circumstances they can assemble.

THE COURT: I suppose we would have to assume and I suppose you are assuming, Mr. Ernst, a prearranged assemblage.

MR. ERNST: In both cases.

THE COURT: I mean an assemblage which was called for by invitation.

MR. ERNST: In both cases. And that is why I got in the words "advertisement and announcement."

MR. HAMILL: He has——

MR. ERNST: The Commissioner can answer the question.

A. I will answer that.

MR. ERNST: Why, of course.

MR. HAMILL: Wait a minute, don't answer it, just yet until I make an objection. Of course, the ordinance only permits anybody to stop a public assemblage on account of riot, disturbance or disorderly assemblage, whatever the wording of the ordinance is. There isn't any right vested in anybody to stop a public assembly anywhere in this country. Now, he himself said that the only reason you could stop it would be for some cause such as the traffic laws. For instance, we have under the Constitution the right of public assemblage, but would anybody at this moment permit five thousand people to gather at 42d Street and Broadway merely if it were to gather? That would be violating the traffic laws.

THE COURT: The traffic is out.

MR. HAMILL: I mean as an abstract proposition, we have it. But the question is as to how to apply this in

particular cases. All of these questions are technical and legal. Now, before I end may I say this: Do you think your Honor will be very much helped in deciding this case by the legal opinion of the Director of Public Safety? Not if I know this Court.

MR. ERNST: I didn't ask his——

MR. HAMILL: And I do.

MR. ERNST: —his legal opinion.

MR. HAMILL: That is what you are asking.

MR. ERNST: I had asked the witness originally but he called on counsel for advice and he said no. I got the counsel on the stand to find out whether he advised Casey and the point of privilege was raised. Then I go on with Mr. Casey and I have no trouble with him, saying "What is your administration position?" and he said "Administratively I allow these assemblages and not these", and the distinction is whether there is a protest against the speaker or not. Now I ask him—and I want this answer——

Q.—whether or not administratively you have taken the position that an assemblage to protest against a speaker has no danger of violence and disturbance and therefore is allowed without permit, as it was on these occasions, but as you have testified, an assemblage announced and called of the same people in the same place, but with no speaker announced, would be unlawful without a permit?

MR. HAMILL: Wait a minute. Have you finished with your question?

MR. ERNST: The witness understands me thoroughly.

MR. HAMILL: All right, so do I, and I object for that reason. It is a hypothetical question and this is a fact witness and unless he shows him the testimony that

such an incident occurred as he brings to the attention of the witness he cannot get an answer.

THE COURT: I thought there was such an incident, wasn't there, in the testimony?

MR. ERNST: I offer in evidence a page from the Jersey *Observer* of May 7, 1938, with particular reference to the advertisement on page 4 and with particular reference to the printing on the bottom "Friends of Organized Labor assemble with us tonight at Journal Square at 7:30 P. M." and I want the record to note that this is the instrument to which the testimony has been referring and which the witness examined in respect to his previous answers.

MR. HERSHENSTEIN: And which the witness says he doesn't even know whether he ever saw it.

MR. ERNST: That's right.

MR. HAMILL: Well, now, you are not going to——

MR. ERNST: I offer it in evidence.

MR. HAMILL: You cannot offer it in evidence except as a part of the testimony of this witness and this witness said "I never saw it."

MR. ERNST: I offer it for identification. Let us get on with the trial.

MR. HAMILL: All right, now you are getting legal.

(Marked Exhibit P-29 for Identification.)

MR. ERNST: Now, your Honor, we have before the Court a specific instance identified, not only by the ad for whatever value it has as to the publicity of the meeting, but we have the Commissioner's own statement that he knows about the meeting. It was a large meeting, there was not permit required, and he has stated fully the reasons why there was no permit needed. We are

attacking the discriminatory use of an illegal ordinance. We must go forward with our examination on the lines I have indicated.

THE COURT: This meeting, Commissioner, did they ask for a permit. You may have answered it.

THE WITNESS: They asked for a permit for that meeting I think of May 7th, I think it was O'Connell or Thomas, I can't tell you offhand.

THE COURT: No, this one here, or is it the same meeting?

THE WITNESS: They all refer to the same meeting. That was a protest meeting.

MR. ERNST: It was the same night, your Honor, as the O'Connell permit was denied and here is an announcement of an assemblage.

THE COURT: Did these undersigned people, did they ask for a permit?

THE WITNESS: They did not.

THE COURT: I don't know that anything is added to it by the Commissioner's opinion but certainly this meeting seems to come within the ordinance.

MR. HAMILL: I didn't see that ad at all.

THE COURT: In my humble legal view.

MR. HAMILL: I mean if I saw it in the press I don't recall it.

THE COURT: Your question, as I understood it, Mr. Ernst, was if they had asked for a permit what would his view have been.

MR. ERNST: No, your Honor, if you will bear with me a moment, maybe it is my fault for lack of clarity, but we start—and this is really an important element

in the entire case—we start with an ordinance which says that in order to have an assemblage you must get a permit. A group in the community or an individual ask for a permit to speak, denied; another group in the community announce that they want to assemble at the same place to protect against a speaker if he shows up.

THE COURT: Well, I don't think, if you will allow me to interrupt——

MR. ERNST: The Commissioner has said—just bear with me a moment, your Honor—the Commissioner has said that an assemblage for the purpose of protesting against a proposed speaker requires no permit under the ordinance and that he knows that the assemblage was large and took place.

THE COURT: No, I don't think you meant that they didn't require a permit, Mr. Casey.

THE WITNESS: No. What I—he was dwelling about the CIO, the way that I had it; they wanted to go there and assemble, not apply for a permit, and no speaker, just talk about an individual.

THE COURT: You don't make any distinction between——

THE WITNESS: I don't make——

THE COURT: No, I am not using that word critically. You don't make any distinction between meetings or assemblages where there are speakers and assemblages where all persons stood silently, do you? I mean with respect to the requirement of a permit; I am not trying to trap you.

THE WITNESS: No, I know that. I don't make any distinction, no. But the questions are very technical that the counselor is putting to me and they are something that I think it is a case for a lawyer to answer.

It is practically on ordinances. My way of reading them might not comply with the law.

Q. Mr. Casey, will you waive the privilege claimed by Mr. Glavin so that he can take the stand and answer these questions, now that you have said you think a lawyer ought to answer them?

THE COURT: It was Mr. Hamill's fault, if I may correct you.

MR. HAMILL: That's right.

MR. ERNST: But on Mr. Hamill's advice Mr. Glavin claimed privilege. Now Mr. Casey says a lawyer should answer it. When I tried to get a lawyer to answer it Mr. Glavin said, on Mr. Hamill's advice, "I claim privilege."

MR. HAMILL: Since you are all set to devour Mr. Glavin I think that I will accommodate you and withdraw the privilege. Judge Glavin will answer your questions.

MR. ERNST: Now, let's go on.

Q. You said there were no arrests made at any one of these three large assemblages in Journal Square and Pershing Field?

A. Not to my knowledge.

Q. In regard to the Veterans' Committee or organization, of which Mr. Hugh Kelly is head, do you know whether that is an incorporated body?

A. I couldn't tell you anything about it.

Q. You never investigated the organization itself?

A. No, never investigated it.

Q. They have protested to you?

THE COURT: Is Colonel Kelly to be a witness, Mr. Hamill?

MR. HAMILL: I don't know. If it develops in the case I will have anybody a witness, but in order to

answer your question briefly I don't know. If I need him I will get him.

THE COURT: Has he been subpœnaed by the complainants?

MR. FRAZER: No, he has not.

MR. HAMILL: I have not consulted with him.

THE COURT: I am only asking because it seems to refer to something that he knew about.

MR. HAMILL: If the Court wants him I will endeavor to get him; he is secretary to the Governor and he ought to be procurable very easily.

MR. ERNST: The witness has answered my question.

Q. In regard to the applications for permits marked for identification or offered in evidence, isn't it a fact that there are none of the envelopes attached to the correspondence except in the cases of the CIO and the American Civil Liberties Union? Do you want to look at them?

A. Well, very seldom anybody keeps any envelopes; they throw they away. I didn't keep them, no, I threw them away. There might be some there. I never save envelopes.

MR. HERSHENSTEIN: May I call Mr. Ernst's attention, there are a number of envelopes attached to these.

MR. ERNST: I just want to know how many.

Q. Will you during lunch hour count them and just let's get the inference for what it is worth, that there are no envelopes showing dates, etc., of receipt except in those two cases and maybe one other, and we will take the answer after lunch.

Commissioner, were you advised by your police as to statements made by Mr. Brophy at the veterans' meeting that rubber hose would be used and violence applied in case CIO or ACLU speakers were allowed permits?

A. I saw it in the public press.

Q. Did you do anything about that threat when you saw it?

A. I did; I consulted the Chief of Police on it.

Q. And he investigated it?

A. Yes.

Q. Did he report to you?

A. Yes.

Q. Is there a written report?

A. No, there is not.

Q. Is that the investigation that you indicated yesterday?

A. That is.

Q. And can you tell me the conclusion of the report; did Brophy deny the threat?

A. He did not; he said, from what his investigation was, just an idle jest.

Q. An idle jest?

A. Yes.

Q. Do you remember what the idle jest in words consisted of as to threat of rubber hose, etc.?

A. I don't remember. It is in the papers, that's where I got my information from.

Q. Police Chief Walsh would know about it?

A. Yes.

MR. HAMILL: I ask your Honor to instruct counsel not to incorporate evidence in his answer. He is the man who brought in the question of rubber hose. There is nothing in this record about rubber hose yet. That is an unjustifiable assumption.

MR. ERNST: I will get it from Mr. Walsh.

MR. HAMILL: I ask it be stricken out, that part of the question.

Q. Commissioner, did you have anything to do with the hiring of buses, the purchase of flags or emblems, the purchase of printing material, the purchase or putting up of bill posters, the hiring of bands, in respect to any of the

assemblages or parades in Jersey City since December 22, 1937?

A. I did not.

Q. Neither directly or indirectly?

A. Not directly or indirectly.

Q. You didn't contribute?

A. I didn't contribute.

Q. Now, Commissioner, I show you a card and ask you whether you recognize it.

A. I do.

Q. It bears your name.

A. That is my name, yes, sir.

MR. ERNST: I offer it in evidence.

(Received and marked Exhibit P-30.)

Q. Mr. Casey, that card was distributed rather widely throughout Jersey City?

A. They are distributed every month.

Q. And by what methods of distribution?

MR. HERSHENSTEIN: Now, if your Honor please, how is that material? Here is a card which was marked in evidence—may I look at it—referring to a meeting at Lincoln High School for Friday, March 4, at 8 P. M.

MR. ERNST: I want to show, your Honor, and there will be no dispute, I think, between the witness and myself, that the card was openly distributed on the streets of Jersey City, left at homes; wide distribution throughout Jersey City around March 4th for this card. March 4, 1938.

MR. HERSHENSTEIN: How is that material?

THE WITNESS: Can I answer that for you?

MR. ERNST: Sure, you can answer it.

A. That was sent up to members of the Safety League, which is a branch of the Jersey City Police Department, which has been running for the last five years.

Q. Was this card——

A. That card is delivered by the man on post, I think, to a member, letting him know that there will be a meeting. That is for a member.

Q. Now, it is distributed for a member, but it is distributed on the street?

A. It is not on the street. It is delivered to a home.

Q. I see. So as far as you know this card and others like it was not distributed on the streets of Jersey City?

A. Not on the streets of Jersey City.

Q. As far as you know. Was the card just put into the mail boxes in the homes?

A. Well, I wouldn't say whether they are delivered in person or put into the mail box. I think they might be put into the mail box. I never went into that, how the man in charge of the Safety League—how he distributes the cards.

Q. But if the evidence shows that the card was distributed on the streets?

A. It was never distributed on the streets. The orders are don't distribute any cards on the street, anything pertaining to the Police Department; and that is the only card that goes out to members of the Safety League who are enrolled in that league.

Q. Commissioner, did you ever speak to Police Chief Walsh in regard to the general question of the granting of permits for meetings and assemblage; did you have conversations with him from time to time?

A. Oh, yes, at all times.

Q. Did you also have conversations with Frank Hague in regard to it?

A. I spoke to Mayor Hague in reference to meetings, certainly.

Q. And with particular reference to——

A. And with other members of the Commission.

Q. That's right. And with particular reference to the granting or denial of the permits we have been discussing in this trial?

A. I used my own judgment on the issuing and rejecting of permits. I spoke to Mayor Hague and the other Commissioners, and they agreed with me, that I was right in refusing the permits.

Q. But you used your own judgment, and you alone had the power, is that right?

A. I have the power. That's the power that is invested in me as Director of Public Safety.

Q. And Frank Hague has no power to deny permits or issue them?

A. That's——

MR. HERSHENSTEIN: I object, if your Honor please. This witness is not obliged to say whether Frank Hague has or has not the power.

THE COURT: The ordinance says the Director, doesn't it?

MR. HERSHENSTEIN: The ordinance says the director.

MR. HAMILL: He says Frank Hague has no power. I don't know whether he has or not. My best judgment is he has not, reading that ordinance.

MR. ERNST: Well, I just wanted to get the record clear.

MR. HAMILL: My judgment is that he has not.

MR. ERNST: I want to get the record clear, because Frank Hague has issued a statement which would lead a reasonable man to assume that he has the power, and that Casey was merely an office boy for him.

MR. HERSHENSTEIN: You have subpœnaed Frank Hague. You can ask him.

MR. ERNST: We are going to. I thought I could get it here from the Commissioner.

MR. HERSHENSTEIN: Then don't ask this witness.

MR. ERNST: I shall ask Frank Hague. Don't worry.

MR. HERSHENSTEIN: I am not worried, Mr. Ernst. But you have taken three hours to ask two questions.

Q. Commissioner, did you hear the corporation counsel in this court, in this trial, say in open court that Jersey City had the power to search and did search all cars with foreign license numbers where there were suspicious people in them?

MR. HAMILL: Who do you mean?

MR. ERNST: Mr. Glavin.

MR. HERSHENSTEIN: I object.

MR. ERNST: I am just asking if he heard it. Won't you please be patient?

MR. HERSHENSTEIN: Why clog the record with questions which are entirely immaterial to the issues involved in this case. It makes no difference whether he heard it or not.

MR. ERNST: It may make a difference, when I come to the next question.

THE COURT: Answer whether you did or not.

Q. Did you hear him say it?

A. I think that's about the time that I come in here. There was some wrangling over it.

Q. It isn't clear in your mind?

A. It is not clear in my mind.

Q. Now, Commissioner, in your exercise of your duties as head of the Department of Public Safety what are the instructions, if any, in respect to stopping automobiles with foreign plates?

A. They don't—it is not strictly foreign license plates. Any car that looks suspicious, the orders of the department,

my orders, are to look that car over, see who is in it. If there is anything suspicious about them, to bring them in and check up on them, which I think I got a perfect right to do under the law.

Q. You don't want to testify on the law, Commissioner, because Mr. Hamill will object to that. I don't want you to talk on that.

MR. HAMILL: I don't know whether that is a matter of law. Have no right to stop a suspicious character or a suspicious automobile? Let us have this out. A police department has no right to stop a suspicious character? Then you may as well abolish detective agencies in every city of this country, if they haven't that right.

MR. ERNST: Just a speech for the audience, Mr. Hamill. I never said anything about it.

MR. HAMILL: I know, but the proposition is to ridiculous that it ought to be heralded near and far as the theory on which the complainants are waging this case.

Q. Mr. Casey, who has the right to decide or who does decide whether a particular car contains suspicious elements, before it is stopped?

MR. HERSHENSTEIN: Now, if your Honor please, I object to that question upon the ground that that is not material. It is not in issue. It has absolutely nothing to do with the issues in this case, as to who determines under what circumstances a car may be searched.

THE COURT: Your assistant corporation counsel gave some opinions on that point. I will let him answer.

MR. ERNST: One of our allegations is that our cars are being searched without reasonable suspicion.

MR. HAMILL: If that is your purpose, then that is perfectly proper. If that is your purpose, go ahead.

MR. ERNST: Wait a minute. I want my question answered. I will put it this way.

Q. Has the cop on the beat got the power to use his own judgment about stopping a car that looks suspicious?

A. He has, if he thinks that that car is suspicious; he has got a perfect right.

MR. HAMILL: Who else's judgment would he use?

Q. And if it looks suspicious to him he has the right to search the car?

A. Yes, sir, he has. That's a ruling of the head of the Department of Public Safety.

Q. And he has the right to search the papers and valises and baggage of the occupant?

A. He has the right to look through the baggage, but not to read the correspondence, I guess, if that is what you are referring to; I don't know.

Q. That's in part. He has no right to look at the papers in a man's personal wallet?

A. He has no right, no. He has a perfect right to search him for guns or firearms or blackjacks.

Q. Now, do you——

A. That's what he does it for.

Q. Do you require a report to be kept by the police whereby they indicate for your judgment every instance where they have stopped a car and searched it?

A. I do not.

Q. You do not. So you have no way of knowing how many hundreds or thousands of cars have been stopped and searched unless the search resulted in an arrest?

A. That's it.

Q. You got no reports from anyone as to searches?

A. I don't get reports. The reports of that nature wouldn't come to my office.

Q. They would go where?

A. They would go to the Chief of Police.

Q. But the Chief of Police in a sense is under you, isn't he?

A. Yes.

Q. Now are you cognizant of the fact that complaints have been made for unlawful search and seizure of automobiles in streets of Jersey City on the basis that there was no ground for suspicion? Do you know of any complaints?

A. If I have, they have been very few. Generally a man that is stopped, he will go along with a policeman, taking it as a real good thing. It is for his protection the same as everybody else, that cars are stopped.

Q. That is, the occupant of the car welcomes being stopped and searched?

A. A lot of them do. Think it is real good police procedure.

Q. And you have gotten commendation on that score?

A. Yes.

Q. That police have stopped the people of Jersey City, I take it?

A. Stopped them?

Q. The people that have actually been stopped have been happy about it?

A. Said it was good police procedure; thought it was a wonderful thing.

Q. Now will you tell me what——

A. And results have proven that.

Q. Tell me what the general regulations are to instruct the police as to when a car or the occupants look suspicious. Have you got any general instructions on that?

A. There is not. That's up to the judgment of the man in charge of that car.

Q. Now, what in particular is that instruction, again, that you say to the policeman on the beat?

A. It is not the policeman on the beat. I think you are talking about squad cars that are touring through the city. They are the ones that I guess you got reference to.

Q. Well, now, let me get that clear. Has anybody outside of people in squad cars got the right to stop an automobile and search the car without a warrant?

A. Any time at all, any police officer, any policeman, no matter what his rank, if a car looks suspicious, that's his orders.

Q. That's right.

A. To search and see what it is.

Q. That's right. So you didn't mean to imply that the searching without warrant of the automobiles on the streets of Jersey City was limited to this particular squad?

A. No, it is not; any police officer.

Q. All right. Now what are the general instructions to that squad of police officers, or the man on the beat?

A. The instructions are the same to every member of the department.

Q. Now what are the instructions?

A. Any time a car looks suspicious, investigate it, see what it is, who they are and all about them.

Q. There is no instruction that gives some kind of a definition as to the word "suspicious"?

A. That looks suspicious——

Q. Just looks suspicious——

MR. HAMILL: I object.

MR. ERNST: I am just asking him are there instructions.

A. That's up to the judgment of the police officer himself, whether they look suspicious or not. He has to use his judgment on that.

MR. HAMILL: The sound discretion of a trained officer.

Q. And the first day a new man is on the force he gets general instructions which include the following: If you see an automobile that looks suspicious you have got a

right to stop it, search the baggage, and you can search completely, but you may not read the personal letters of the occupant, is that about it?

MR. HAMILL: If your Honor please——

A. Well, now, just a minute.

MR. HAMILL: I object.

A. I guess you are going a little too far on that.

MR. HAMILL: Don't answer it, please. These are all hypothetical questions. Has such a thing occurred? When it has, we will deal with the facts and not would you do so and so in such circumstances? This man is not on for that.

MR. ERNST: There is lots of evidence in this record——

MR. HAMILL: Would an officer just appointed be justified in searching a man? I will say yes, if he were made an officer he was selected on grounds of ability, and therefore is capable of entertaining a reasonable suspicion, and if he had a reasonable suspicion, he had a right, then, to investigate. But I object to those questions be asked of this witness. This is a fact witness.

MR. ERNST: This is a defendant.

MR. HAMILL: He can ask him are there any rules. He said no. Now he is asking what would an officer do under certain circumstances.

MR. ERNST: If your Honor please, will you kindly have the question read? Because I didn't ask him at all what an officer would do under certain circumstances.

MR. HAMILL: You said an officer just appointed. I object. Suppose there is no baggage.

MR. ERNST: No, if your Honor please——

MR. HAMILL: Let us assume that that sort of a situation is occurring.

THE COURT: Does he get any instructions at all?

MR. ERNST: That is all I am asking.

A. The instructions that a man gets is like everybody else, general with the police department.

MR. HAMILL: What are the instructions regarding search?

MR. ERNST: Now——

MR. HAMILL: To new officers?

MR. ERNST: Mr. Hamill, you can get to that on cross-examination. I didn't ask what cops did. All I asked was, was there the instruction to a new officer, and I did that because Mr. Hamill injected the idea that trained and tried officers were searching cars.

MR. HAMILL: No.

MR. ERNST: And I took the rookie, that's all, because you opened the door.

MR. HAMILL: No. No, I reframed your question on the principle of assistance to the needy. Yours had been so badly framed.

MR. ERNST: I want the answer to the question, your Honor.

THE COURT: That was my question.

THE WITNESS: The instructions are general, to every man in the police department, in reference to suspicious cars; in his judgment, if the car looks suspicious, he has got a perfect right to look it over, and see who they are, ask them who they are. If they are all right, and they prove themselves satisfactory to the officer, they are allowed to go on their way.

Q. Are there not men stationed at particular spots at the entrance to Jersey City with particular instructions to stop and search cars?

A. There are.

Q. There are. And how many such men are there in the police department?

A. There is four squad cars. By that I mean with five men in those cars.

Q. For the particular purpose of searching, stopping cars?

MR. HERSHENSTEIN: Under certain circumstances, Mr. Ernst.

MR. ERNST: You can cross-examine as to the circumstances. I hope you do.

MR. HERSHENSTEIN: Well, don't let the record stand that they may just stop cars.

Q. Have those men any particular instructions to stop cars that are old or are not expensive, or the drivers wear caps or Negroes in them, or labor labels on the sides of the cars, or anything else?

A. They are instructed to stop any car that looks suspicious.

Q. Do they ever come back and ask you and Mr. Walsh about borderline cases?

A. About what?

Q. About borderline cases?

MR. HAMILL: I object unless the witness knows what he means.

MR. ERNST: I just asked him if they ever asked about it, not what they asked.

MR. HAMILL: Ask him the twilight zone. He might understand that. Or the no man's land of the law.

Q. Do they ever ask you about cases that they are in doubt about?

A. They do not.

Q. Never have?

A. I don't come in contact with the men running the squad cars.

Q. And they would ask Walsh——

A. They come in contact—there is a man in charge, a captain of police, who they come directly under. They make their reports to the captain, which I am not interested in.

THE COURT: Ten minutes recess.

(At this point a short recess was taken.)

(After recess.)

DANIEL CASEY, resumes the stand.

By MR. ERNST:

Q. Commissioner, do you remember testifying in a case which came into the United States Court around March, 1937, of the American Civil Liberties Union and various other plaintiffs against Daniel Casey and Harry Walsh, do you remember testifying in the case?

A. Yes.

Q. I think it will facilitate everybody on time if you will take this record of the case, and I can refer to page references. Will you look on page 412. Do you see a question and answer which read as follows:

"Q. I mean anyway, have they a right to shove them around anyway?

"A. They have a right to escort them out if they are doing anything wrong. If the case don't warrant arrest they have a perfect right to do it."

Do you see that?

A. On page 412?

Q. Yes. Maybe I can help you locate it.

THE COURT: That is Walsh, isn't it? In my testimony it is in Walsh's testimony, isn't it? 412—oh, you have a printed record.

MR. ERNST: Printed record, page 412. It is on 411. I want to correct that.

Q. Do you see that testimony?
A. Yes.
Q. Did you so testify?
A. Yes.

MR. ERNST: Now may I ask, your Honor—I want to ask counsel for the defendants whether they will not agree with me that we can save time by having me read various portions of this testimony. I will then ask the witness just two questions, did he so testify and is he of the same opinion now.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: The defense then can introduce such other portions of the testimony as they see fit.

MR. MATTHEWS: I object, your Honor please. The proper way to do it is to confront the witness with the question. No breach of that rule will be tolerated or consented to by us.

THE COURT: I imagine, Mr. Matthews, it is not for the purpose of contradicting the Commissioner just to save time by having him testify the same way if he so desires.

MR. MATTHEWS: We object to that. Your Honor knows the objection is well put. You haven't any right under the rules of evidence to allow that procedure. I interject myself at this point because the question is asked of all counsel, and after this witness leaves the stand I will be largely responsible for the conduct of this case. Now, I lodge this objection on the ground it is contrary to the rules of evidence and the rules of procedure in the examination of a witness.

MR. ERNST: I would just like to get from opposing counsel the following: I understand that the suggestion I made in order to same time is not accepted. Then you made a proposal, as I take it, as to how we could go forward and save some time.

MR. MATTHEWS: I refuse to become instructor for counsel for the petitioner.

MR. ERNST: I thought you were making a suggestion; I am sorry, sir.

MR. HAMILL: Let me know what you want, I am counsel of record in this case and I will tell you what you can put in and what you can't put in. What is it you want to get in?

MR. ERNST: There are various statements that the witness here made under oath in a previous case.

MR. HAMILL: Well, the difficulty with this is——

MR. ERNST: You asked me a question; do you want me to answer it?

MR. HAMILL: Yes, I do.

MR. ERNST: I only want to know whether he made those statements and whether he still agrees with them, that's all.

MR. HAMILL: Well, you can ask him did he make a certain statement in a certain case. That is nothing more than confronting your witness with a statement made in another place.

MR. ERNST: I will make no more attempts to save time. If your Honor please, we will have to go through it in the dreary way.

MR. MATTHEWS: Now, if your Honor please, that comment, if in answer to my objection, if he wants to make it the dreary way we cannot help it.

MR. ERNST: I resented your statement, sir, that you objected. I made a proffer in aid of convenience and you came back and posed an objection as if I had raised a legal right. You know well that I offered something as a convenience for you.

MR. MATTHEWS: If you cannot distinguish between a legitimate objection and your pleasure that is not my fault, sir.

MR. ERNST: Well, you may learn more about that later.

MR. MATTHEWS: Not from you, sir.

Q. Now, Mr. Casey, did you or did you not testify in the case I refer to as follows, in answer to questions, and if you will take this and we will have to read it through:

"Q. If a policeman sees a man committing a disorderly act what are his duties, to arrest him?

"A. Well, at times. It is according to what it is. Trifling violations, that I would consider trifling violations, I don't think a man should be arrested for.

"Q. What should be done?

"A. A warning.

"Q. I see. What is the alternative to a warning? Suppose the man doesn't take the warning, what is the alternative?

"A. If he doesn't take the warning, if it is something that is of a trifling character—it is according to what the crime is at all times.

"Q. Well, you have mentioned warning. What else has a policeman a right to do besides warning a citizen?

"A. Well, they have a perfect right to arrest a man.

"Q. So we have warning and arrest.

"A. Certainly.

"Q. What else has he a right to do if a man does not obey him?

"A. If he doesn't obey him he has a right to arrest him.

"Q. Has he a right to do anything other than arrest him?

"A. Well, as I just told you before, Mr. Hays, it is according to what the case is.

"Q. Well, you mentioned warning and arrest.

"A. Yes.

"Q. Outside of those two has he a right to do anything else?

"A. An officer has got a perfect right to lock a man up for a traffic violation, hasn't he?

"Q. Yes.

"A. He gives him a warning for it, doesn't he?

"Q. Now, listen. You mentioned two things an officer has a right to do. Has he a right to do anything else than either warn a man or arrest him? Has he a right to do anything else?

"A. That is according to what the crime is, what the man has done.

"Q. What else can he do in any crime other than warn and arrest him?

"A. That's all he can do."

I want to stop there.

MR. HERSHENSTEIN: Now, if your Honor please——

MR. ERNST: Just a minute.

MR. HERSHENSTEIN: Beg pardon, I thought you had finished.

Q. I just want to ask: Did you so testify in that case?

MR. HERSHENSTEIN: Your Honor please, I object to that question upon the ground that it is not proper direct examination of any witness. Counsel may ask this witness now as a fact what he thinks the duties are and the rights of policemen and if his testimony should be contradictory of something which he stated

in another case he may be confronted with his testimony for the purpose of showing he testified differently.

THE COURT: I think that is technically correct.

MR. HERSHENSTEIN: But I say it is very improper to take the record in which this witness testified and say "Didn't you so testify?"

THE COURT: Can you hear me? I think technically you are right. It would take, I imagine, another half hour. I have no objection——

MR. HERSHENSTEIN: Well, I don't know whether it would take another half hour. Perhaps those questions aren't at all material to this issue.

MR. ERNST: I want to ask the witness this question. We might be able to save some time.

Q. You heard me read some questions and some answers, and I ask you now whether those answers state your present position as to the rights of policemen——

MR. HAMILL: I object.

Q. (Continuing.) —in those circumstances.

MR. HAMILL: Don't answer. I object. Not unless we would know all of the circumstances and the whole of the case in which that evidence was given. That evidence was given with reference to a particular case before your Honor.

MR. ERNST: Your Honor, I withdraw it. I withdraw the whole proceeding.

MR. HAMILL: All right.

MR. ERNST: Along this line. I am going to ask the questions.

MR. HAMILL: Ask him what are his opinions now.

MR. ERNST: I am not going to ask him what you suggest. I am conducting the inquiry. You can cross-examine.

MR. HAMILL: I am making my objection, sir, to the Court, and——

MR. HERSHENSTEIN: He withdrew the questions.

MR. ERNST: I withdraw the questions, Mr. Hamill.

MR. HAMILL: That has nothing to do with my motion. That does not preclude my addressing the Court; and the purpose now is to find out under what rules he acted at the time the things were done which are at issue in this trial.

MR. ERNST: All my questions on this line are withdrawn and I ask the following:

Q. Commissioner, I am right, I think, when I say that you do know what the rights and duties of the police are, am I not?

A. Yes.

Q. If a policeman, Commissioner, sees a man committing a disorderly act, what are his duties?

MR. HAMILL: I object.

MR. ERNST: Wait a minute. Let me finish my question.

Q. (Continuing.) What are his duties—to arrest him?

MR. HAMILL: I object. That's a legal question.

If a policeman sees a man committing a disorderly act, what are his duties? Now the evident answer is that one of his duties is to arrest him, but why is it necessary to ask the question of a witness when there is a legal question that the Court will pass upon? If a policeman sees a man committing a disorderly act, what are his duties? A lawyer will answer that question. The law will answer it.

MR. ERNST: If your Honor please——

THE COURT: Can't you save time, Mr. Ernst, by asking the Commissioner if in his opinion under any circumstances the police have a right to deport persons?

MR. ERNST: Well, I think I——

MR. MATTHEWS: That would be objectionable, with respect to the Court, and we do object to that question; that question using the word "deport," and at this stage of these proceedings, is not purviewed by either the pleadings of the case or any of the evidence that I have heard from this witness thus far. I would object to it, with respect, as your question.

MR. ERNST: Your Honor, we are in this embarrassment, with the shift of counsel.

THE COURT: Yes, I do think——

MR. ERNST: Probably the new counsel does not know that we have spent hundreds of pages——

MR. MATTHEWS: Every one of which I have read. I have read it all.

MR. ERNST: Relating to deportation.

MR. MATTHEWS: I have read it all.

MR. ERNST: That the bill alleges a conspiracy and a plan within which this man is a part—— .

MR. MATTHEWS: I have read it all, Mr. Ernst. I have read it all.

MR. ERNST: I just want to finish my statement. Within which this man is a part——

MR. MATTHEWS: Thank you, but I have read it all. You are wasting the Court's time and mine. I have read it all. I have read the whole testimony.

MR. ERNST: If your Honor please, may I continue uninterrupted a moment?

THE COURT: Yes.

MR. ERNST: I didn't interrupt you.

MR. MATTHEWS: Well, I don't want you to tell it to me; tell it to the Court.

MR. ERNST: I want to tell it for the benefit of the new counsel, if needed.

MR. MATTHEWS: It is not needed.

MR. ERNST: You need not listen, sir.

MR. MATTHEWS: I am listening but I am bored.

MR. ERNST: With the record I am content. This man is—let's stop this nonsense—this man is a party defendant to our plan, a conspiracy, of people to deport American citizens.

MR. MATTHEWS: Now, that statement I object to, if your Honor please, as very contemptuous of your Honor, if your Honor doesn't realize it. Here is a statement by counsel accusing this man of crime.

THE COURT: If you will allow me, Mr. Matthews, I think I can take care of myself.

MR. MATTHEWS: Well, maybe so, but you don't seem to be in that instance, with respect to you, when he charges that against a citizen of a community, and as long as I am in this case, sir, and for the sake of this record, I again repeat that it is contemptuous of your Honor.

THE COURT: That is your opinion, Mr. Matthews.

MR. MATTHEWS: My opinion, sir, as an officer of this court.

MR. ERNST: If your Honor please——

THE COURT: I appreciate your solicitude.

MR. MATTHEWS: Thank you.

MR. ERNST: If your Honor please, I think that I ought to make this statement to clear up this confusion. Possibly in reading the record the new counsel did not realize that we had a lengthy debate as to the meaning of the word "conspiracy" in relation to the pleadings, and for him to attack me for contempt of this Court and say he has read the record would require an apology if I cared to ask for one from him.

MR. MATTHEWS: I will not give it.

MR. ERNST: I am going to continue my questions. I am sorry I can't limit it to just the word "deport," because I will be faced with this kind of argument.

Q. Well then, I am right then, when I say that you do know what the rights and duties of the police are, am I not? Will you answer that, Mr. Witness, please?

A. I am.

Q. If a policeman sees a man committing a disorderly act what are his duties? To arrest him?

MR. HERSHENSTEIN: I object to that, if your Honor please.

THE COURT: He may answer. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. To arrest him; if the case don't warrant it, a trifling violation, warn him.

Q. Does it make any difference whether it is a trifling violation or not?

A. The policeman is to use good sound judgment, whether—he will consider the case, who the man is, before he would lock him up.

Q. I want to ask my question again, Commissioner. It is very simple. Does it make any difference whether it is a trifling violation?

A. (No answer.)

Q. I didn't ask you anything about the man; just the simple question, does it make any difference whether it is a trifling violation?

A. It is according to what the case is, whether to lock him up or not.

Q. Does it make any difference whether it is a trifling violation?

A. It is up to the judgment of the policeman.

Q. Does it make any difference whether it is a trifling violation or a big one, to the policeman?

A. He considers it, yes.

Q. He does? That's all I want. That's fine.

MR. HAMILL: Your Honor, may I at this point say this, that that question is not a proper question, is it a trifling violation or a big one? In the exercise of sound judgment, if one citizen would nudge another, it would be a violation of the law, but it would be a stupid thing for a policeman to arrest him for it. Of course he exercises some judgment, I suppose, and the Commissioner, the Director, has said in the exercise of his sound judgment, which I submit is a good rule.

MR. ERNST: It may be of some passing interest to note that the questions were asked in a case where Mr. Glavin and I think Mr. Hamill were also counsel and not objected to.

MR. HAMILL: That is the trouble, Mr. Ernst. You were not in that case.

MR. ERNST: All right.

MR. HAMILL: And you have not read that whole record, have you?

MR. ERNST: Yes I have, sir.

MR. HAMILL: Well now it is a fair remark to make that you don't recollect all that is in that record.

MR. ERNST: No, I certainly don't recollect all that is in that.

Q. Now I want to ask you, Commissioner, in the case where there is a trifling violation, you don't think a man should be arrested for it, do you?

A. No I don't.

Q. What do you think should be done?

MR. HERSHENSTEIN: I object, if your Honor please, to what this witness thinks should be done with somebody who commits a trifling violation. Now it is not material, it is not relevant to the issue in this case, if your Honor please, and it certainly serves no purpose.

THE COURT: I will allow it. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. What is the alternative for a warning, Commissioner? Suppose the man doesn't take the warning, what is the alternative?

MR. HERSHENSTEIN: I object to that, if your Honor please. Supposing a man doesn't take the warning, what is the alternative? Certainly it isn't material to the issues of this case. It is a conjecture.

MR. ERNST: Your Honor, we have evidence here in the record already of arrests, of warnings, of warnings followed by arrests, of every element that is in these general questions.

MR. HERSHENSTEIN: Mr. Ernst may think so, but I don't agree with him.

THE COURT: You may answer. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. HERSHENSTEIN: I think the record is barren of any such evidence.

Q. Will you answer the question?

A. What is the question again?

Q. (Pending question read by the reporter.)

A. Well it is up to the policeman, what he should do, whether he should lock him up or just shove him out of there.

Q. Now you have mentioned warning and you have mentioned arrest; what else has the policeman the right to do besides warn or arrest a citizen?

MR. HERSHENSTEIN: I object to that question upon the same ground, as to conjecture.

THE COURT: I think that's too general, Mr. Ernst.

MR. ERNST: That's too general?

THE COURT: I think that is too general.

Q. Have the police the right to shove a man around?

MR. HAMILL: I object to that.

MR. HERSHENSTEIN: I object to that, your Honor, to asking him whether they have a right to shove a man around.

MR. FRAZER: May I ask the Court to warn counsel to confine the objections to one counsel when there is a single witness? We have been holding a rodeo here, with three counsel performing.

MR. ERNST: In disagreement, may I add, at times.

MR. FRAZER: At times in disagreement, but it seems to me that if Mr. Hershenstein is the witness' counsel, he should make the objections and Mr. Matthews and the others should not get up.

MR. HERSHENSTEIN: Why did you object?

MR. MATTHEWS: I made my objection because it was a general objection, may it please your Honor, but not

as an objection to the testimony of the witness. I agree with Mr. Frazer that one counsel should examine him. I think Spaulding was a bit miffed, though, because of the fact that I signaled to Charlie that I thought it would be a good objection.

MR. FRAZER: Not at all. Any time you feel like signaling, you may do so.

MR. HAMILL: Let's get this down. Isn't it in the sound discretion of the Court how many shall answer?

THE COURT: I say that—I don't suppose I should introduce my personal feelings but it is very trying to have three counsel objecting, and I might further say some of them with some apparent personal bitterness. So far we have been free from that in this case and I would like to have it continue.

MR. MATTHEWS: No personal bitterness, but there is nobody in this case, if I can help it, as an officer of this Court, who will make it a special interest story room instead of a court room, your Honor.

THE COURT: I think that, Mr. Matthews, if you will allow me to say so, is not very courteous.

MR. MATTHEWS: Well, I didn't mean it to you.

(Question repeated by the reporter as follows: "Have the police a right to shove a man around?")

MR. HAMILL: I object to the question as being indefinite.

THE COURT: Now, have we agreed which counsel will object?

MR. ERNST: I am flattered by the overwhelming number but I think we can proceed quicker if it is limited to one.

THE COURT: I shall have to insist that one do it at a time.

MR. HAMILL: I shall take it then. My objection is it is too general, my point being that nobody has a right to shove anybody around under ordinary circumstances.

MR. ERNST: Now he is testifying, your Honor. Let the witness say that.

THE COURT: You may answer.

A. Well, nobody has got a right to shove anybody around, but in cases where it warrants it or to stop disturbances, and the duties of a policeman to break it up, he has to shove people around. You can't lock up everybody that is in that crowd where there is a disturbance.

Q. You mean that if the policeman shoves a man gently around in some circumstances he is proper in so doing?

A. It is according to what the case is. It is up to the judgment of the policeman that he use good judgment when he does shove anybody around and have a cause for it whereby if he is locking that person up and taking him out of there, that it is going to cause a lot of trouble to try to disperse crowds, and they have to shove them around to do it. Even in parades you have to shove them around to keep them back from the line of parade. I don't say that that person should be locked up because somebody behind him is shoving him.

Q. Commissioner, have the police a right to escort people out of town if the people are doing anything wrong?

MR. HAMILL: I object to him answering that question. It is a legal question. What is your opinion on it?

MR. ERNST: You can put me on the stand, Mr. Hamill, and I will testify.

MR. HAMILL: Well, I will take you without being sworn. What's your opinion?

MR. ERNST: No, I will testify when I am on the stand.

THE COURT: You may answer.

A. Where a man—my opinion is that a policeman has a perfect right to escort anybody from the seat of danger.

Q. They can escort them out of town?

MR. HAMILL: He didn't say that.

THE WITNESS: I didn't say out of town.

MR. ERNST: I didn't say he said it; I am asking him the question.

MR. HAMILL: No, but you quoted Mr. Ernst as if you were reciting what he said and I wanted it to be understood.

Q. Commissioner, have they a right to escort people out of town, out of Jersey City?

A. To escort them out of it? It is according to—it is according to what the case is, and for the protection of the person that they are escorting they have got a perfect right, in my judgment, to escort them and protect them where they won't be molested.

Q. Do I understand you to testify that they have the right under certain circumstances to escort people out of Jersey City?

MR. HAMILL: I object unless he states the circumstances.

MR. ERNST: Under any circumstance.

MR. HAMIL' The question is too vague.

MR. ERNST: The Commisisoner himself indicated two circumstances and I don't think you want to limit him to the two circumstances.

MR. HAMILL: Suppose, for instance, a mob was after him to kill him, wouldn't any citizen have the

right, or be under a duty in fact to save his life and to escort him any place, not only to escort him, to escort him in those circumstances against his will, even though he says "I want to be killed?" There is a law against suicide and they would take him.

A. It is not a right, it is good judgment, in the protection of the person's life.

Q. And you approve it at times?

A. I approve of it, yes.

MR. HAMILL: Approve of what? Not approve of the escorting, he approves the escorting to save their life.

THE COURT: That's what he said.

MR. HAMILL: That's understood.

Q. Do you approve of escorting people out of Jersey City for purposes other than saving their life?

A. What's that? I didn't get it. Your back was turned to me.

Q. Sorry.

(Question repeated by the reporter.)

MR. HAMILL: I object unless he states the other purposes. This is a very difficult question to answer.

Q. Any other purpose than saving life.

MR. HAMILL: Well, he may not have in mind any other purpose.

THE COURT: Then he can say so.

MR. HAMILL: It is personal safety that is engraved there.

MR. ERNST: You don't have to tell this witness how to answer my questions in your objections, Mr. Hamill, let him testify.

MR. HAMILL: The difficulty is, Mr. Ernst, that your questions are asked and ought to be asked of a lawyer instead of a layman. That has been my objection all along.

MR. ERNST: Your Honor, these are the identical questions asked before and Mr. Hamill appears in the record as counsel with no protest of vagueness.

MR. HAMILL: That's all right; because we didn't object there is no reason we shouldn't object here, I take it: this is a different proceeding, your Honor.

THE COURT: That's right.

Q. Will you answer the question, Mr. Witness, please.

A. Well, where trouble is going to start and riots and disturbance, where people would be manhandled and general trouble, I think, my opinion is that a policeman has a perfect right to remove the cause of that disturbance no matter what it is, whether it is general or what the disturbance is.

Q. The case that you are now giving, I take it, and justifying is one where there is a congregation of people, sort of an angry crowd,—I don't know the exact word you used,—who put in peril the safety of a human being.

A. That's right.

Q. And in order to protect his safety he may be deported?

A. I don't say he is deported.

Q. Escorted out of town.

A. To a point of safety.

Q. And it may even be out of town?

A. I don't say that he should be put out of town, I say take the man to the best place to protect him; if he is a nonresident, if he wants to go to New York, well and good, let him go.

Q. And protect him from what, from some other people?

A. Certainly.

Q. And so you would say that the purpose of this escorting outside of Jersey City or within Jersey City is to protect an individual from a group of other human beings who are threatening his safety?

A. Right, from mob violation.

Q. And would you say that unless there was this threat from other human beings that the policeman would not be justified in escorting a man outside of Jersey City?

A. It is according to what the case is. I cannot give you an answer——

Q. Give me one.

A. (Continuing.) —to that question without you telling me something or specifying some case where it happened and I will try and enlighten you on it.

Q. Let me have the case—oh, you want me to give you a case?

A. Yes.

Q. Well, are you familiar with the escortings or deportations of November 29, 1937, in Jersey City?

MR. HAMILL: I object.

MR. ERNST: He asked me to give him a case.

MR. HAMILL: No, but Mr. Ernst, look at your question. That question is unfair because it assumes something—are you familiar with the escortings or deportations of November 29th.

MR. ERNST: He can say yes or no.

MR. HAMILL: Now, has there been any deportation? That is your conclusion, that it is a deportation.

A. I don't know of anybody being ordered out of Jersey City on November 29th, to the best of my recollection.

Q. Do you know of anybody to whom the suggestion was made by the police that maybe for their safety they should go out of Jersey City on November 29th, you don't even know about that?

A. Offhand I couldn't tell you unless you state what the case is to me.

MR. HAMILL: And of course, your Honor please, right here I object to the word "deportation." If it is used in the sense of illegal expulsion from a city; if it is used in the sense of permitting a man or even taking a man for his own safety out of the limits of the city, then the word is properly used.

Q. Commissioner, are you familiar——

MR. HAMILL: It is not the first time that a term which connotes one thing is used to describe another totally different.

Q. Commissioner, on November 29, 1937, some CIO organizers and sympathizers distributed leaflets in Jersey City and are you familiar with such events that surrounded the distribution?

A. I know about it, yes.

Q. Do you know whether or not there was any mob or group of people threatening the safety of the distributors of the leaflets—just does he know.

A. I think we referred to that case, the statements of Mr. Carney, how he was going to invade Jersey City, in the public press three or four days before he came in here.

Q. Mr. Casey——

A. That was why we took that precaution, I remember about that.

Q. But you don't know whether there was any mob or group of people or a single person who on November 29th threatened the safety, the physical safety of the distributors of those leaflets, do you?

MR. HAMILL: I object unless we see the relevancy of it.

MR. ERNST: He asked me for an instance.

MR. HAMILL: Well, I think we have had instance enough then unless this is relevant. Now, there has been conducted of this witness an inquiry asking him to interpret rules of law and the best he can say is "I would obey the ordinance and my officers would use their sound judgment under the circumstances." Now, that sound judgment would be exercised according to the circumstances and would motivate the officer to do different things at different times. That's all that can be said and all of this inquiry is thoroughly irrelevant.

THE COURT: You may answer.

Q. Answer the question.

MR. HAMILL: I object to the question.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

A. I do know that there was a crowd down around Exchange Place. I know men were taken from Exchange Place handing out leaflets there; they were going into the Harborside Warehouse,—if you want what the case is I will tell it to you.

Q. You weren't there. Just let's get your impression.

A. They went there for to protect them people that come in here, I guess two or three hundred strong, and marched down Montgomery Street; it was illegal. We took the leaders before they got down around the tube, tried to stop them, and disband them. They refused to do it, went down there and caused commotion. Before there was a riot there those people were taken to a certain part of the city and released. It was their protection, to stop riot and bloodshed, down around that Harborside Warehouse that they were taken away.

Q. Whom did you get this version of events from, Counselor?

A. From the chief of police.

Q. The chief of police. And did you also get from the chief of police this word "invasion" that you mentioned?

MR. HAMILL: I object to this question and should have objected to the question that was answered. He was asked what was his impression of what happened. Now, what difference does it make from whom he got that impression if he believed in the impression?

Q. You didn't order the arrests personally, did you Commissioner?

A. I didn't order the arrests, that is the duty of the chief of police.

Q. That's right. Now, you said you to a report from the chief of police. I merely ask whether I am fair in assuming that in that report this word "invasion" appears.

MR. HAMILL: No, I object unless it is proved that it did appear.

MR. ERNST: I want to know whether to pin it on this man or the chief of police.

THE COURT: You may answer; you may have an exception.

A. Well, to begin with, I as head of the department—

MR. HAMILL: I think the Court has ruled.

THE COURT: Yes, I allowed him to answer.

MR. HAMILL: Your Honor will grant me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Just whether you got it from the chief of police the word or not. Very simple.

A. I told the chief of police; it was my orders to the chief of police if that is what you want.

Q. That's right. It was your orders?

A. My orders——

Q. Because——

A. Now, let me explain it to you.

Q. Your orders, because——

A. It was my orders to the chief of police when I see that article, I think it was in the Bergen "Record," where they were going to invade Jersey City two thousand strong; I told him I didn't want any disturbances down there, not to allow them to do it. "If there was any disturbances it is your duty to prevent this invasion, prevent trouble, and if you think it warrants it the leaders, to take them to a spot anywhere in the city for their own protection and for the pr ' ction of the city, that we would have no disturbances or riots and turn them loose, let them go where they felt like going."

Q. Now, Commissioner, it was on the strength of this article that you saw in the newspaper that you——

A. Several papers I seen it in.

Q. Several?

A. Several.

Q. Several papers. You mentioned one specific one.

A. Well, I did.

Q. That's right.

A. That was the first one I saw it in.

Q. Wait a minute. It was on the strength of that article that you came to the conclusion that Mr. Carney was going to invade Jersey City, is that right?

A. Yes.

Q. Did you get in touch with Mr. Carney to find out whether he had been properly reported?

A. It was Mr. Carney's duty, or it was Mr. Carney's pleasure, to tell me that he was going to do it, if he felt like it. It wasn't for me to consult Mr. Carney.

Q. Did Mr. Carney——

A. That is the way I looked at it.

Q. Did Mr. Carney ever tell you personally that he was going to invade Jersey City?

A. He did not.

Q. So the only basis for your concluding that there would be an invasion was the item in the newspaper, right?

A. That is right.

Q. And you didn't bother to check it up with Mr. Carney?

A. The result——

MR. HAMILL: Mr. Ernst, if you want Mr. Carney's statement, I am going to give it to you.

MR. ERNST: No, you can cross-examine him later.

MR. HAMILL: It might save you from asking these questions.

MR. ERNST: I don't want you to save me anything.

MR. HAMILL: Here is Carney's statement, if you want it, and here is the heading, "Prepared for invasion, C. I. O."——

MR. ERNST: If your Honor please, may I continue my examination?

THE COURT: What paper is that?

MR. HAMILL: This is the Newark Evening News.

MR. ERNST: They can produce it later, if your Honor please.

MR. HAMILL: Of Tuesday, November 23, 1937. I will show it to your Honor. "C. I. O. prepared for invasion."

MR. ERNST: If your Honor please, I object to this interruption of my examination.

MR. HAMILL: "Plans for a showdown between C. I. O. and 'I am the law' Hague have been completed."

Mr. Carney uses the word "invasion."

MR. ERNST: Mr. Carney doesn't use the word "invasion."

MR. HAMILL: The newspaper uses the word "invasion."

MR. ERNST: That is different, sir.

MR. HAMILL: And that's where he got the word "invasion."

MR. ERNST: And that's the gist of your mistake, and I am glad to get the admission.

MR. HAMILL: My mistake! Why here it is here, and there is where he got the word "invasion." Mistake! Read it.

MR. ERNST: Mr. Carney will take the stand that he never so said, so don't let's waste time now.

Q. Mr. Commissioner, you detailed men down there because you had read some items in the newspaper, is that right?

A. Yes, sir.

Q. And how many men did you detail?

A. I didn't detail the men. I told the chief of police to detail them. I don't handle the men of the department.

Q. And did you tell him how many men to detail?

A. I did not. He was to use his own discretion on it.

Q. All right. Commissioner, let us get back to the old point. Do you say that the police under certain circumstances have been given instructions that they have a right to put people out of Jersey City, is that it?

A. I gave them that instructions. That was my orders to the chief of police.

Q. And your instructions said that they have a right to put them out of Jersey City if they are undesirable?

MR. HAMILL: Oh, no, he didn't say that. I object to that.

MR. ERNST: I am asking the question.

MR. HAMILL: He didn't say that.

MR. ERNST: He can say no.

MR. HAMILL: You would like him to say it, but that is the very thing he won't say.

Q. Didn't your instructions indicate that they could be put out of Jersey City if they are undesirable? Yes or no. Did your instructions contain it?

A. Not in this case that you are talking about.

Q. Did they in any case, in your instructions, provide that people could be put out of Jersey City if undesirable?

A. It might have happened, yes.

Q. It might have happened. Do you know whether it did happen?

A. I might have given them instructions some time ago.

Q. Do you recall whether or not around March, 1937, your instructions provided that they have the right to put people out of Jersey City if they are undesirable?

A. That was the way that I thought myself at that time.

Q. And when did you change your mind, since that time, if you have changed it?

A. Well I got a perfect right to change my mind. It is according to what the case is and what it warrants.

Q. You admit that your mind was made up in March, 1937, that you had a right to deport people if they are undesirable, as you said at that time?

MR. HAMILL: No, he said it depended upon the circumstances; it depended on the circumstances. All of these rules get down to what happened in that case tried before your Honor, and this is nothing more than an attempt to trap the witness into making a statement which in his mind refers to a state of facts but on the record it looks like the expression of a general rule.

MR. ERNST: If your Honor please, I am not referring to any case, and I can't imagine what case Mr. Hamill is referring to.

MR. HAMILL: I am referring to that one that you have in your hands.

MR. ERNST: Oh, this is not in evidence.

MR. HAMILL: Yes.

MR. ERNST: You objected to it.

MR. HAMILL: But you are reading questions——

MR. ERNST: Oh, no, Mr. Hamill. Don't be silly.

MR. HAMILL: You are reading questions from that record. You don't want us to doubt the evidence of our own eyes?

MR. ERNST: I am asking questions. I tried to read from the record and you objected.

Q. Mr. Commissioner——

MR. HAMILL: All your questions are framed from information in that record, and unless we know the whole record your questions do not always apply to this case.

Q. Do your instructions to police provide that they have a right to escort people out of Jersey City if the people have no right in Jersey City?

A. My instructions are different in every case as it presents itself to me. I think what the proper thing we should do, and my instructions are to that effect.

Q. Are there some circumstances under which your instructions provide, *some circumstances*, provide that the police have a right to escort people out of Jersey City if the people have no right there?

MR. HAMILL: I object. His rule of conduct is all stated in that last question——

THE COURT: It seems to me it is the same question, Mr. Ernst.

MR. HAMILL: It is the same question, which has been answered over and over again.

MR. ERNST: He didn't answer it before.

THE COURT: I thought he did.

MR. ERNST: No, the implication of his answer was that it depends on the circumstances of the case, but he did not yet admit that under the circumstances of certain cases he believes that the police have the right to escort people out who are undesirable and have no right there.

MR. HAMILL: And what good would that be evidentially, unless we knew the cases? Under certain circumstances you have the right to do anything. Under certain circumstances you have a right to kill people; for instance, if they go to kill you.

Q. Commissioner, who is to make up their mind or the policeman's mind whether a person is undesirable and whether or not he should be escorted out of Jersey City?

A. If there is a detail there, it is in charge of the ranking officer.

Q. That is the man in charge?

A. The man in charge of a detail at all times.

Q. And should the man in charge ask his superior, or does he work on his own judgment, as to whether a man should be taken out of town?

A. It is according to what the case is, and what it warrants. If it is for the protection of the man or for the protection of the citizens, that's his orders.

Q. But, Commissioner, so that your instructions are, among other things, that if the sergeant of the police or the captain or lieutenant deems a person undesirable, that a policeman can put them out of Jersey City?

A. He has——

MR. HAMILL: I object. He has not said that. He has said that they used their judgment in the circumstances. There is an evident intention and purpose on the part of counsel to try to get that squarely on the

record as a rule to be followed. The director has told him that any rule, and that rule in particular, rests on the circumstances of the case. This is only an attempt to entrap a witness, and I therefore object to the question.

Q. Commissioner, I want to show you page 413 of the case I referred to before, to refresh your recollection, as to your position in regard to the subject, and if you will bear with me a moment and let me read, it may help you refresh your recollection.

MR. HAMILL: I object on the ground that what took place in that case is not relevant in this case except that he may call the attention of the witness to a certain statement and ask him whether he made it or not.

THE COURT: I thought that was what he was doing.

Q. Mr. Commissioner, I want to call your attention to a certain statement, and I ask you whether you made it or not. The statement was:

"Well, that's the instruction, yes."

Did you make that?

MR. HAMILL: Referring to what? I object to that.

MR. ERNST: Referring to a question, "So that your instructions are if the sergeant of police or the captain or lieutenant deems a person undesirable, that a policeman can put them out of Jersey City."

MR. HAMILL: I object.

MR. ERNST: Let me finish. "Are those the instructions?" "A. Well, that's the instructions."

MR. HAMILL: I object. Don't answer these questions until I tell you.

THE COURT: He may answer them at two o'clock.

MR. HAMILL: I object, not unless he knows.

(Noon recess.)

AFTERNOON SESSION:

DANIEL CASEY, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. ERNST:

Q. Commissioner, do you decide in a particular case whether or not there is a strike?

A. It is not for me to decide that there is a strike; if I do hear there is a strike in any factory or anywhere in our city I make it a point to find what the facts are concerning the strike, what it is all about.

Q. And do you decide whether or not the workers can picket or not?

A. I don't decide whether they can picket or not; I have no objections to picketing.

Q. Commissioner, I show you page 422 of the record previously referred to in order to refresh your recollection——

MR. HAMILL: Your Honor please, I thought we settled that this morning; I thought your Honor agreed with me when I said it is not what his opinion might have been then, what does he think now.

THE COURT: I am not sure that this is for that purpose. This may be to contradict. What is it, Mr. Ernst?

MR. ERNST: No, this is not to contradict, this is to make sure that the witness is giving his full and correct answer and he might be aided by looking at his testimony in March, and I am only going to ask him when he has read it to find out if he has been aided and then ask him if he stands by his answer and then I will ask him when he changed, if he did change. Now, the chances are he will not have changed on any of the matters. That will simplify it. I think I have a right to ask him to refresh his recollection from any document. He is my witness.

THE COURT: Just show it to him.

"Q. A strike is on is a matter for the police to decide, is that right?

"A." —Your answer, Mr. Casey. "Just a minute. It is a strike where there is a question about whether it is a strike or not.

"Q. Well, whether there is a question about it or not is decided by the police department, is that right?

"A. No, we don't decide if there is a strike or not. We decide whether they can picket or not."

Is that your position today?

A. It is not.

Q. It is not. When did you come to a different position than that?

A. (No answer.)

Q. Let me put this first——

A. Just a minute.

Q. This was your position in March, 1937, was it not?

A. That's what I testified to.

Q. Yes. Now, you have changed your position since then?

A. (After examining transcript of testimony.) Yes, that's right, whether they will picket or not; if there is no strike, I figure there is no need of pickets.

Q. And then you were asked further: "Well, you come to that conclusion depending on whether you decide there is a strike or not," and you answered, "Certainly." That was your position in March, 1937. Is it still your position?

A. It is still my position today.

Q. And then you were asked, "Then you do decide whether there is a strike or not, don't you?"

A. I don't decide——

Q. And you answered—you answered, "Yes, sir."

Now, do you now take a different position than you did in March, 1937?

A. Well, if there is a strike I don't decide whether it is a strike or not. If them people have gone out on strike, it

certainly is a strike. I can't say, if they are out on strike, it isn't a strike when it is. That is my position. If it is a strike, it is a strike; if it is not, it is not. And if it is a strike, they have got a perfect right to picket.

Q. Commissioner, you did testify, the question was asked, "A strike is on is a matter for the police to decide, is that right?" And your answer was, "Just a minute. It is a strike where there is a question about whether it is a strike or not."

Next question: "Well, whether there is a question about it or not is decided by the police department, is that right?"

A. It is not.

Q. You answered, "No, we don't decide if there is a strike or not. We decide whether they can picket or not.

"Q. Well, you come to that conclusion depending on whether you decide whether there is a strike or not?"

Your answer was, "Certainly."

When did you change your position?

A. That I can't say.

MR. HAMILL: I object to that.

A. (Continuing.) —I am giving you——

MR. ERNST: He can't say. He has answered it.

A. (Continuing.) —you my opinion today, how I feel about it.

Q. Perfectly all right. Now, what is your position today in respect to the right to picket?

A. If there is a strike they got a perfect right to picket: I believe in living up to the law and I do to the best of my ability concerning strikes.

MR. HAMILL: Now, right at that point I wish to address the Court. Your Honor will know, of course, and your Honor will take judicial notice of the fact that at that time there was no decision by our Court of

Errors and Appeals, but since then there is a decision by our Court of Errors and Appeals holding that where there is no strike there can be no picketing, and that is the law today.

THE COURT: I don't want to try to interpret the decisions of the Court of Appeals, because I have only read this one in the newspapers. Didn't that have to do with secondary boycott?

MR. HAMILL: No, I mean the decision of the Court of Errors and Appeals.

THE COURT: On secondary boycotting?

MR. HAMILL: I am not talking about this very recent one of Vice-Chancellor Egan.

THE COURT: No, I mean——

MR. HAMILL: There was one before that. Suppose we get it for the Court; then we won't be speculating about it. I will have those decisions, if not this afternoon I will have them tomorrow morning.

THE COURT: If you will just give me the reference, I mean; I know the Egan one.

MR. HAMILL: But after that a decision came out.

Q. Commissioner, do you decide in the case of picketing in a strike whether the union involved is a bona fide union or not?

A. I do not; as long as it is a union they got a perfect right to picket; they don't have to be union or anything else. If the factory decides to go out on strike I can't stop them. I don't decide it. That is their troubles, not mine. My trouble is to protect life and property.

Q. Now, in March, 1937, you had another position, didn't you? I want to refresh your recollection from this question and answer:

"Q. You decide whether the union involved is a bona fide union, is that right?

"A. I do."

Now, I ask if you have changed your position since March, 1937, and just when did you change your position?

MR. HAMILL: I object and for this reason, that the charges in the bill are such that it does not matter what the opinion of the Director was in the past or whether he has changed it or not, but what is the policy and what was the policy of the City of Jersey City with regard to picketing at the time this bill was filed.

MR. ERNST: Your Honor please, I would like to know when he has changed his position. He may have changed it before the bill was filed or after.

Q. I will ask you this to help Mr. Hamill out. Did you change your position——

MR. HAMILL: Don't help me out at all, help yourself.

Q. (Continuing.) —in regard to whether you had to find out if a union is bona fide or not?

A. That is my opinion today. I am giving you my opinion today.

Q. Was that your opinion at the time that the bill was filed? I will give you the date in a minute.

MR. HAMILL: I think it was in January.

Q. In January; was that your opinion, in January?

A. Well, I couldn't state when it was my opinion—in January—it is my opinion today. That's the way I feel about it today.

Q. Did you get an opinion from counsel which aided you in changing your opinion?

A. No, I used my own judgment on it.

Q. And you no longer consider the question as to whether or not a union is a bona fide union or not?

A. No, I do not.

Q. And you do not consider now whether the people commit a crime, I would clasify them as undesirables.

A. I do at all times with undesirables; I haven't changed my opinion a bit on undesirables.

Q. And if they are undesirable you have them put out of Jersey City, is that so?

A. Where they have committed a crime or are about to commit a crime, I would classify them as undesirable.

Q. You permit peaceful picketing if you determine there is a strike, but you don't interfere with them?

A. I don't interfere with peaceful picketing.

Q. At times you take sides one way or the other if you come to the conclusion that there is no strike?

A. I don't come to any conclusion. If I can straighten the strike out between the workers and the employers I am only too glad to do it if I am asked to sit in conference with them.

Q. I want to refresh your recollection from the record at page 407, question and answer as follows, and I want to know if that is your present position.

A. That's the way I feel about it today. I am giving you how I feel about it today.

Q. But I just want to get this: "As I understand" the question is "the only time you take sides one way or the other is if you come to the conclusion there is no strike?

"A. If there is no strike what is the picketing for, what is the crowd of busybodies injecting themselves into it for?"

A. I gave you my opinion in my statement that I just made in my answer and that's the way I feel about it today.

Q. And do you feel also about it today as indicated in this question and answer?

A. No, I have changed my opinion about it.

Q. Have you ever heard of a place being picketed in order that workers may be persuaded to unionize and join the union?

MR. HERSHENSTEIN: I object, did he ever hear of a place—absolutely no relevancy or materiality in this case.

THE COURT: Yes, I think so.

Q. Would you permit picketing peacefully where workers or others want to persuade people in a plant to unionize and join the union?

A. I would not.

Q. You would not. And you would not do so even if the plant were the largest plant in Jersey City?

MR. HERSHENSTEIN: Now, if your Honor please, that presupposes——

A. Well, I will give you my answer, my reason for it, if you want to know.

MR. HERSHENSTEIN: Wait a minute.

A. (Continuing.) But if Mr. Hershenstein——

Q. I want to know, of course. You are my witness. Go ahead.

THE COURT: Go ahead.

A. Picketing a plant where there isn't any labor trouble is liable to cause riot and bloodshed, and as a precaution for the safety of the people of Jersey City, I would refuse them picketing there.

Q. Are you familiar with the National Relations Labor Act passed by Congress?

A. I am not.

Q. Have you ever read it?

A. I have not.

Q. Have you ever been advised in respect to the rights of people to picket under that act?

A. I have not. I am giving you my honest opinion, Counselor, what I would do.

Q. I know that.

A. If I am wrong, I will abide by the rulings of the Court.

Q. But your present position is that no matter the nature of the business, whether it is a bus line or a can company or a big factory or a small one, you will not allow picketing for the purpose of persuading the workers to join a union?

MR. HERSHENSTEIN: Pardon me. You mean where there is no strike?

MR. ERNST: Where there is no strike.

A. That's my opinion, what I gave you, Counselor.

Q. And that's your position?

A. That's the way I feel. I might be wrong.

Q. That's right.

A. I am giving you my opinion, what I would do until I am otherwise stopped by the Court.

THE COURT: Mr. Hamill, I want to be fair after all to the Commissioner, who is not a lawyer, has he had any legal advice from your department on this legal question?

MR. HAMILL: On the National Labor Act? No, sir, he has not.

THE COURT: The question put by Mr. Ernst?

MR. HAMILL: No, he has not.

Q. Did you ever request an opinion from the corporation counsel on the subject?

A. I did not.

MR. HERSHENSTEIN: Now, if your Honor please, supposing the matter hasn't been presented in a way where such a request was necessary?

A. I never had a case like that presented to me. If I did I would consult the corporation counsel on it. I am giving you my opinion from what I feel and how I feel about it.

MR. HAMILL: You see, he is not referring to any specific instance. He is asking him has he obtained knowledge or an opinion regarding a certain act.

THE COURT: I asked him. I asked that.

MR. HAMILL: Yes.

THE COURT: I thought it was fair to the Commissioner who is not a lawyer. That is the reason I asked him.

MR. HAMILL: Yes.

Q. Do you recall a meeting of the City Commission of Jersey City some time in the early part of 1937, at which the matter was discussed by you with the Commissioners relating specifically to the rights of piekets?

A. Offhand, no, I don't.

Q. I would like to refresh your recollection:

"Yes, with the Seamens we didn't allow them to picket.

"Why not?

"A. It wasn't a bona fide union. It wasn't a bona fide strike.

"Q. Was there any other reason?

"A. That's all.

"Q. And you have had trouble with this same union, the Furniture Workers Union, before, haven't you?

"A. We did.

"Q. And the same people were involved in it," et cetera.

"A. They were.

"Q. Now, is the City Commission of Jersey City in any way, or has it ever in any way, opposed to the American Federation of Labor?

"A. They have not.

"Q. To your knowledge did the representative of the American Federation of Labor appear before the City Commission of Jersey City while you were a member of that Commission?

"A. I don't quite get that question, Counsellor.

"Q. Did a representative of the American Federation of Labor appear before the City Commission of Jersey City while you were one of the Commissioners.

"A. They did.

"Q. And what was the purpose of that?

"A. Picketing."

Does that refresh your recollection, this testimony you gave about the American Federation of Labor appearing before the Commission in respect to the rights of picketing?

A. I think there was a delegation there one day, and to tell you the truth now, offhand I couldn't tell you what it was, whether it was picketing or what it was.

THE COURT: Commissioner, when you have your meetings of the City Commission, is there a stenographer present?

THE WITNESS: There is.

THE COURT: Probably that would be——

THE WITNESS: That could be verified there.

THE COURT: Yes.

THE WITNESS: I don't remember that. I know that there was——

THE COURT: Have you got the date, Mr. Ernst?

THE WITNESS: But what transpired there now I don't remember.

THE COURT: Have you got the date, Mr. Ernst?

MR. ERNST: I will get it this way:

"Commissioner, would you permit picketing today of what are called runaway shops?" If you don't know what they mean I will define them.

MR. HERSHENSTEIN: I object, if your Honor please, because that is not material or evidential to this issue. There is no evidence there were runaway shops. There is no issue in this case as to runaway shops and the testimony therefore is entirely immaterial.

THE COURT: There was evidence of one runaway shop. I don't know whether runaway is the right word.

MR. HERSHENSTEIN: I don't know.

THE COURT: There was evidence of one.

MR. ERNST: It is in the record.

THE COURT: It is in the record, in this case.

MR. ERNST: I will tell the witness frankly what I want to know. He says he won't allow picketing when there is no strike. So I want to find out whether if a shop runs out of another town and comes into Jersey City and there is no strike, whether he will or will not allow picketing in that situation.

MR. HERSHENSTEIN: Now, what difference does that make?

MR. ERNST: That is the situation as to which we have testimony in the record already.

THE COURT: That is correct, Mr. Hershenstein. There was some testimony as to one.

MR. ERNST: And we will tie it all up later.

Q. What is your answer, Mr. Casey?

MR. HAMILL: What difference——

MR. ERNST: Let's have one counsel, please.

MR. HAMILL: With the permission of the Court, may I say this?

THE COURT: Yes, go ahead.

MR. HAMILL: Until it is a matter of record that there are runaway shops here, the opinion isn't relevant.

THE COURT: That's true, but there was one, Mr. Hamill.

MR. HAMILL: Well, assuming that there was; ask him what he did in a particular case. He said that if there is no strike anywhere, there can be no picketing.

MR. ERNST: I want to know——

MR. HAMILL: That applies to everything.

THE COURT: Well, if the answer is inclusive, all right.

MR. ERNST: Will you take Mr. Hamill's answer, Mr. Witness?

MR. HAMILL: That if there is no strike—We take this stand, since you have invited me to give it; that we don't know whether the shop is a runaway shop or not. That is a matter which occurred somewhere else. All that comes under our observation and judgment is that there is a certain industry in the city. Its past may have been good, its past may have been bad. We are bound by the law as expressed by the highest court, the Court of Errors and Appeals in this case, to permit picketing only where there is an actual strike. We sympathize deeply with the man who may be victimized by this runaway shop, but we are powerless.

THE COURT: Well, I don't want to ask you too many questions of law, but has the Court of Appeals ever passed on the runaway shop question?

MR. HAMILL: No.

THE COURT: The Court of Appeals of New York has, I think, but I don't——

MR. ERNST: If your Honor please, there is also such a thing as a federal system of jurisprudence.

MR. HAMILL: Yes, and where does it apply to any particular case? I can say to this case; because I don't know what you are driving at, if you know yourself, in any definite way.

MR. ERNST: I take it that it is an objection to my question. I will ask for a ruling from the Court.

THE COURT: You may answer.

MR. ERNST: Is that an objection or isn't it?

MR. HAMILL: Well, it certainly isn't a commendation or an approval. Yes, it is an objection.

THE COURT: You may answer.

Q. Go ahead.

A. We have had shops that they claimed were runaway shops; picketing was allowed there.

Q. Even if there was no strike?

A. We have had——

Q. Yes or no—even if there was no strike?

A. Yes, we did allow picketing, runaway shops, where they claimed, the men, they were out on strike in New York, they run away and they come over here and were allowed picketing, even recently.

Q. And do you allow solicitation—what?

A. Recently I am talking about.

Q. Do you allow solicitation where there is no strike, that is, solicitation of membership to a union?

A. I got no objections to soliciting in an orderly manner.

Q. Do you permit the carrying of leaflets on a picket line?

A. I do now.

Q. You do not?

A. I do now.

Q. You do now. Fine.

A. I don't stop the handing out of pamphlets.

Q. Do you permit peaceful pickets to carry the leaflet up in the air instead of handing it out?

A. We have a city ordinance prohibiting the carrying of signs.

Q. Do you permit pickets——

THE COURT: Have you got that? Is that in the bill, Mr. Hamill?

MR. HAMILL: I don't know whether that is included.

MR. ERNST: No, we have not got it.

MR. HAMILL: But there is such an ordinance. I haven't a copy of it.

MR. ERNST: I would like the witness to answer.

MR. HAMILL: I would not say prohibit the carrying of signs, regulate the carrying of signs. I don't recall all of its provisions now but we will get that.

THE COURT: I think in fairness to the Commissioner, after all he is enforce the city ordinances, and if they are wrong someone else will have to do something about that.

MR. HAMILL: I think so, too.

Q. I would like to ask the Commissioner: Do you permit the carrying of placards on peaceful picket lines?

A. I do not.

Q. You do not. Did you ever get advice of counsel on that subject?

A. I abide by the city ordinance.

Q. That is, you yourself read the city ordinance and came to the conclusion that no placards could be carried by pickets on picket lines?

A. I, as a member of the Commission, live up to the laws of the state and city ordinances of the city to the best of my ability.

THE COURT: How old is that ordinance, Commissioner, do you remember? We will have it here.

THE WITNESS: I guess it is a year old, maybe more. I couldn't tell you definitely, your Honor.

Q. Do you recall whether under that law that you live up to permits must be granted for the carrying of placards on picket lines?

A. You cannot issue a permit in violation of an ordinance, it don't give you that power.

Q. And as you operate——

A. And there hasn't been any permits issued.

Q. So I take it, as you construe your powers under that ordinance you may not grant a permit to carry placards on a picket line?

A. I couldn't if I wanted to.

Q. And it is an unlawful act to carry a placard on a picket line?

A. It is.

MR. HAMILL: I object.

THE COURT: Under the ordinance.

MR. HAMILL: Well, the Court of Chancery in this state has on several occasions regulated whether signs could be carried or not, and in a number of cases refused to allow the carrying of signs.

THE COURT: Don't you refer to cases where there was personal abuse on the sign?

MR. ERNST: No, your Honor.

THE COURT: I mean, Mr. Hamill, those Chancery cases.

MR. HAMILL: Yes, or where they would be provocative.

THE COURT: That is what I mean.

MR. HAMILL: And the Court of Chancery has taken notice of that. What I want to call attention to is he is getting in pretty deep with a lay witness, asking him to lay down rules of law, and I hope the Court will take notice of that fact.

MR. ERNST: Your Honor please, my purpose is to the contrary. My purpose is not that I hope to get rules of law but to prove that he is acting in violation of the laws.

Q. Now, do you allow placards to be carried then on picket lines?

A. I don't allow any placards to be carried at any time. That goes for strikes, business houses or anywhere that they should be carried.

Q. How about parades, Mr. Commissioner?

MR. HEERSHENSTEIN: You mean labor disputes?

Q. I said how about parades, do you allow placards in parades?

A. I do.

Q. You do?

A. On parades, yes.

Q. And you do that because the ordinance in your judgment gives you the power to make a distinction between a parade and a picket line?

A. It does, I think so. I may be wrong but that is what I think.

Q. And you have never consulted counsel on that either?

A. No, I haven't; if it is wrong they will remedy it.

Q. But all parades have the right, in your opinion, to carry placards?

A. I never stopped it.

Q. You would have stopped it if it had been in violation of the law as you see it?

A. If I got an opinion on it, yes.

Q. In the absence of getting an opinion, if you had come to the conclusion that it was a violation of law you would have stopped it, wouldn't you?

A. I wouldn't stop it without an opinion on that, that is a very technical question. That is interfering with societies which I think I shouldn't interfere with, law abiding citizens I will have no trouble.

Q. And Mr. Commissioner, you do interfere with other societies known as trade unions in the carrying of placards, don't you?

A. I do, yes.

Q. And you do that without an opinion of counsel?

A. I do, yes.

Q. And you make no distinction as to what the placard says in the case of a strike?

A. No, I don't.

Q. A simple placard saying "We are on strike" could not be carried, is that right?

A. No.

Q. In Jersey City, Mr. Commissioner, who decides with respect to escorting people out of the city whether the people are undesirable, does the mayor decide it?

A. The mayor has nothing to do with it.

MR. HERSHENSTEIN: Wait a minute.

THE COURT: The answer is no.

Q. Does the commissioner of public safety decide it?

A. It comes under the jurisdiction of the director of public safety; it is a perfectly police matter under the direction of the chief of police, if he is there, or the next ranking officer.

Q. Now, do you at times decide to escort people out of the community if you think you as commissioner of public safety can get along better with him out of the community, and if you think he is going to cause trouble in Jersey City?

A. Yes, as an undesirable, yes.

Q. Do you have the power in your opinion to keep these undesirables from entering into Jersey City as well as escorting them out?

MR. HAMILL: Right there I want to put in this: "Undesirable" must be used in the sense the witness said, namely, those who are either committing unlawful acts or that he knows are going to commit unlawful acts.

THE COURT: I don't know how anyone would know what someone is going to do in the future.

MR. HAMILL: Suppose he announced in the newspapers he was going to come over to do an unlawful act?

THE COURT: Declare his intention.

MR. HAMILL: Declare his intention. In other words, must you wait until the unlawful act is committed?

(Question repeated by the reporter.)

A. I think that I am justified in doing it for the protection of the city; that is my opinion.

Q. Now, as to the circumstances under which you believe it is your duty to keep people out or put them out, may I refresh your recollection that you testified in the record to which we have been referring at page 415 as follows:

"Q. Commissioner Casey, who decides whether people are undesirable in your city, does the mayor decide that?

"A. The mayor does not.

"Q. Does the commissioner of public safety?

"A. At times, yes."

Then you proceed to say the following:

"A. If we decide we can get along better with him out of the community and he is going to cause trouble for us we keep him out, if he don't belong there."

Is that your position today?

A. Yes, it is.

Q. You permit placards to be carried in parades, I understand?

A. Yes, sir; I never stop them.

Q. Do you permit placards to be carried in public assemblages where there are no parades and where there are to be no speakers?

A. I don't interfere with them.

Q. On the occasion of Norman Thomas' visit to Journal Square in Jersey City, were placards carried in the crowd?

A. I couldn't tell you, I wasn't there.

Q. Were you there the night that O'Connell was to come over?

A. Yes.

Q. Do you recall if there were placards carried?

A. There were.

Q. Do you recall what the placards said?

A. I don't know; they were carried in the parade.

Q. And in your opinion it makes no difference in your determination whether you permit placards or not whether the placards carry legends and statements that are libelous or not?

A. No, I don't bother about it.

Q. You don't consider what is printed on the placard?

A. I don't. Pay no attention to it.

Q. I want to clear up one other thing. The men on a picket line, if you permit the picket line, may hand out pieces of printed cardboard or paper saying "This factory is on strike?"

A. A pamphlet, yes, I have no objections to them living up to the rulings of the Supreme Court.

Q. Now, they can carry that legend "This factory is on strike" on cards, say ten by twenty, and hand them out those cards?

A. No, I don't allow it, not with a card; they can hand out a pamphlet.

Q. Now, let's get that distinction. They can hand out a pamphlet and not a card. You mean it must be printed on more than one piece of paper?

A. I mean they can hand out pamphlets but you are talking, I think, if I get you rightly, you are talking about sandwich signs, is that it?

Q. No, no, a man on a picket line can hand out a piece of paper, foolscap size, and have printed on it "This factory is on strike"?

A. No objections to it, that's right.

Q. No objections. Can he hand out now the same size but printed on cardboard, pieces of cardboard and hand them out where the cardboard has printed on it words saying "This factory is on strike"?

A. I got no objection, it is a pamphlet.

Q. But he cannot hold up that same piece of cardboard ten by twelve with the same words on it and walk up and down with it, is that right?

A. He has got a right to hand it out if he wants to, that is what the law says.

Q. He can't hold it up in the air?

A. No.

Q. May he have painted on the back of his shirt the phrase "This factory is on strike"?

A. Painted on there?

Q. Yes.

A. I never stop them from having painted signs on them. We see children going around every day with big signs painted on their backs, school boys and everything else. I got no objections to what he wants to paint on his clothes.

Q. So that men on a picket line may have on the backs of their coats or shirts written in ink or painted a statement saying "This factory is on strike"?

A. Got no objections to it.

Q. No objection. May they carry arm bands carrying a legend "This factory is on strike" or the name of their union?

A. Never stopped them.

Q. And you have no objection?

A. No objections; as long as it is a strike it is a strike.

Q. But if the words "This factory is on strike" are painted on a piece of paper that is held in the air instead of printed on a piece of linen which composes the coat, in your opinion it is illegal and must be stopped?

A. That is what I do.

Q. And on that you never got legal opinion?

A. I didn't even ask on it.

Q. Do you recall around December 6th having an interview with a reporter of the Federated Press, the reporter's name being Berlow, do you recall such interview?

A. No, I don't.

Q. Do you recall having seen a statement purporting to be made by you to Mr. Berlow of the Federated Press, which statement appeared, among other places, in the *Guild Reporter* of December 6, 1937?

A. I never saw it.

Q. You never saw it. Now I would like you to see if this will refresh your recollection. It was reported—and I am not sure whether you said it or not; I don't believe every word there is in print, but it was reported as follows:

"About the campaign to organize Jersey City, Casey, tall and muscular, roared 'Blood will run from the heads of C. I. O. organizers if they persist in harassing the industries of Jersey City.'" Did you ever say that?

A. Never in my life.

Q. You went on to say—see whether you said this:

"We will apply every law on the books to keep those strikers out of the town."

A. I did not.

Q. You did not. "Casey later said that policies for handling the labor situation were worked out in a conference he attended with Hague and Police Chief Walsh, and that ancient law books would be combed for statutes limiting union activity."

Did you ever say that?

A. I did not.

Q. I am asking you this, Commissioner, because we are going to have the man here; the reporter will be here, you see.

A. Well, I can't help that. I never made a statement of that kind, so I don't care what anybody says.

Q. You are supposed also to have said this:

"All known C. I. O. organizers entering Jersey City will be arrested."

Did you ever say that?

A. I never said that.

Q. You are also supposed to have said:

"Picketing by more than one or two persons would bring arrest for unlawful assembly."

A. I never said that.

Q. You never said that? Therefore this report, which ran in the *Guild Reporter*, through the wires of the Federated Press dispatch, is not to be believed, in your opinion?

A. It is not. It is ridiculous. I never made such a statement.

Q. Well, I am very happy, because I am checking it up with you, as to whether or not you did make them, before I am willing to believe it.

MR. ERNST: I would like to offer in evidence form of permit which has been identified as Exhibit P-14.

MR. HERSHENSTEIN: No objection.

(Received in evidence as Exhibit P-14.)

MR. ERNST: I would like to offer in evidence as one exhibit all of the correspondence produced by the witness, the defendant, indicating denials of permits, being all of the correspondence of all denials, together with certain correspondence relating to the granting of three permits, the three permits granted being those of the War Mothers to assemble outside of the Jersey City Armory, the Jersey City Veterans Law and Order Com-

mittee, for a parade May 7th, and the Citizens Veterans Law and Order Committee for a parade on June 6th, 1938.

I would like the record to indicate that the latter request for permit was signed by Hugh A. Kelly, chairman, Jersey City's Better Law and Order Committee.

MR. HERSHENSTEIN: No objection.

(Received in evidence as Exhibit P-31.)

MR. ERNST: Your witness.

MR. HAMILL: Now, if your Honor please, before this cross-examination begins, I wish to make two inquiries. I understand that counsel for the complainants wants Judge Glavin to return here and take the witness stand, and I would like to know when they want Judge Glavin here. Also I wish to announce that the Mayor has and will have important official business to attend to, and it will require his continuous attention; and will the Court——

THE COURT: When, when?

MR. HAMILL: ——tell us when we are to bring the Mayor here?

THE COURT: I can't tell you that.

MR. FRAZER: I have taken this all up with Mr. Hershenstein on several occasions. I don't know the need of this particular speech at this moment. The delay in the examination of Commissioner Casey has made it a little difficult.

MR. HERSHENSTEIN: I promise that Commissioner Casey's examination will not take more than an hour, if that; not more than an hour, if that.

MR. FRAZER: Then I would think that we would very likely be able to call the Mayor some time tomorrow.

MR. HAMILL: What time tomorrow? Morning or afternoon?

MR. FRAZER: I can't be pinned down to fifteen minutes.

MR. HAMILL: I beg your pardon?

MR. FRAZER: I will give you notice——

THE COURT: It was agreed that half an hour's notice would be given.

MR. HAMILL: Well, it may take an hour's notice.

THE COURT: Well, an hour's.

MR. HAMILL: I mean a half an hour in the broad sense, in the sense of a short space of time.

THE COURT: You didn't say about Judge Glavin, though, I don't think. When do you want him?

MR. HAMILL: What about Judge Glavin?

MR. ERNST: We will probably want Judge Glavin after Mayor Hague.

MR. HAMILL: All right.

MR. ERNST: But we will give you an hour's notice on that also.

MR. HAMILL: All right. Tomorrow is Judge Glavin's court day, Thursday. Will you need him tomorrow?

MR. FRAZER: We will try to accommodate the Judge's court engagements, of course. We don't want to be unnecessarily troublesome.

MR. HAMILL: I appreciate that, but Judge Glavin will arrange in case you want him. He is ready to forego his court appointments.

CROSS-EXAMINATION.

By MR. HERSHENSTEIN:

Q. Commissioner Casey, you referred in your testimony to some newspaper clippings, with regard to the statements of Mr. Carney and his threatened invasion of Jersey City.

A. I do.

Q. What dates were those statements published?

THE COURT: Well, let's have the newspapers.

A. The newspapers will tell me. I——

Q. Referring now to the *Newark Evening News*, it was published under date of November 23, 1937?

A. Right.

Q. Is that approximately the date upon which you saw the other publications?

A. That's about the time. If I see the paper I will tell you definitely.

Q. You were questioned, Commissioner, regarding the date upon which you saw the notices in the newspapers. You testified that the *Bergen Record* publication appeared on February 22d, and the *Newark News*, you thought, was the 29th, and Mr. Ernst said "of what month?" and you said, "February."

I think the *Newark News* on the 28th or 29th, the *Jersey Journal* on the 24th, and the *Hudson Dispatch* on the 23rd of February, 1937—quoting from page 545 of the record. Were you mistaken as to the month, Commissioner?

A. Yes, sir, I might have been mistaken on the month, and the paper——

Q. You referred to these publications then as having appeared in November.

A. That must be it, if it is in the paper. It was the invasion of Carney into Jersey City.

Q. Now then Mr. Ernst intimated to Mr. Hamill when he produced the newspaper or held it in his hand that Mr. Carney was misquoted. As a matter of fact, did Mr. Carney or his representatives appear in Jersey City on the

morning of the date stipulated in the newspaper reports that they would appear?

A. They did.

Q. And that was the incident, was it not, of November the 29th?

A. It was.

Q. Now, leaving that for just a minute, Commissioner, exhibit now marked P-31 contains all the applications made for permits which were denied or not acted upon, from December 1937, through May 1938?

A. They do. They are, rather; they are the applications that were denied.

Q. I beg your pardon.

A. They are the applications that were denied, or not answered.

Q. Now first referring to these applications, it is a fact, is it not, that in all there were ten applications made in those six months for permits to hold public meetings which were either denied or not acted upon?

A. Right.

Q. Now for a minute referring to those applications, in the order in which they were considered by counsel for the plaintiffs, let me call your attention, sir, to the applications. The first two, dated April 12th and April the 19th, were made by James Jeff Burkitt?

A. Right.

Q. And the applications were for a permit for a meeting to be held at Journal Square either on April 16, 1938 or April 23, 1938, isn't that a fact?

A. Right.

Q. Now the application of April 12, 1938 of James Burkitt was replied to by you and denied from the carbon copy attached to the application on what date?

A. The application was made on the 12th and it was denied on the fourteenth.

Q. That's two days after you received the application?

A. Yes, sir.

Q. And the application made by the same party, and of course they might be considered as one application, because it is the same person, was made on April the 19th, and I now show you a carbon copy attached to the application and ask you upon what date that was denied?

A. That was denied on April the 22d and the application was made on April the 19th.

Q. That's three days after?

A. Yes.

Q. Now I call your attention, Commissioner, to the statement in Burkitt's application of April the 19th. I am now reading from the last paragraph in which he says:

> "Regardless of whether you issue the permit or not I am going to attempt to hold a meeting there at 8:30 P. M. Saturday April 23, 1938."

That statement appears in his second application for a permit, is that so?

A. That is right.

Q. Now in denying these two permits, Commissioner, you took all the facts into consideration which you knew about Mr. Burkitt, and you used your best judgment and discretion in passing upon it, did you not?

A. I did.

Q. And you denied these two applications in accordance with your letter refusing the permit, because you were satisfied that the meetings would tend to result in disorder and disturbance?

A. Yes, sir.

Q. As a matter of fact, you had facts in your possession, did you not, which led you to that conclusion?

A. Yes, sir.

Q. Were there meetings in which Mr. Burkitt had participated which did result in disorder?

A. There have been.

Q. Now the second application in Exhibit P-31, the application of the Independent Speakers Association, dated May 9, 1938, that application was also for a permit, was it

not? I am referring to the last paragraph of the application for a permit to speak at Journal Square on either Thursday, May 19th or Friday, May 20. That is a fact?

A. Right.

Q. I now ask you to examine the carbon copy of your refusal of that permit and ask you on what date did you deny that permit?

A. I received it on May 9th and I denied it on May 10th.

Q. Pardon me?

A. I received it on May 9th——

Q. Yes.

A. And denied it on May the 10th.

Q. That is one day after you received it, is that correct?

A. Right.

Q. I now show you the third application made by the Socialist Labor Party bearing date May 23, 1938. Now, that application, you withheld judgment, did you not, because of the fact, in accordance with your carbon copy letter, you requested further information concerning that meeting?

A. Which one are you talking about now, counsel? There is two of them here.

Q. Pardon?

A. There is two of them here.

Q. Perhaps I may be wrong.

A. Which one do you mean?

Q. I am sorry. You denied the application, did you not?

A. Yes, I denied this application.

Q. I think, Commissioner, we ought to clear this situation up. Annexed to this Socialist Labor Party application you will find a memorandum written in longhand which bears the stamp of your office "Received May 3, 1938," does it not?

A. Yes.

Q. That application has annexed to it a carbon copy of your letter dated what date?

A. May the 4th.

Q. And the carbon copy of that letter indicates that you requested further information, does it not?

A. Yes.

Q. Now, what was the information you requested?

A. I asked him to "present your application in person, list the speakers who will address your meeting, also give me a list of your officers so I may investigate same."

Q. And you requested that information one day after you received the application, did you not?

A. Yes, sir.

Q. And isn't it a fact that it wasn't until May 23, 1938, that information came to you from the Socialist Labor Party pursuant to your request of May 4th, isn't that a fact?

A. Well, that is when I received that letter, on May 23d. I don't know what that one is without looking at it.

Q. And annexed to that letter was a statement of Nicol Gerold who claims to have interviewed you concerning this application, in which he states he appeared at your office on May 6th, that he presented an official page of the *Weekly People*, pointing specifically to Quinn Itinerary and other organizers on the road and explaining that they were traveling from place to place with no permanent address. You thereupon asked for a list of officers and he again showed you an official page of the *Weekly People*. That communication came to you under date of May 23d, is that correct?

A. Right.

Q. That application you did not act upon?

A. I didn't act upon it, no.

Q. Were you satisfied from the information—as a matter of fact, did a Mr. Gerold come to your office?

A. No.

Q. You don't know whether any such information was given to you?

A. I don't know, I couldn't say to be sure on it, whether he did come or not; I wouldn't say positive that he did come there. Maybe if I saw the man I could tell you.

Q. The next application was made by a Mr. William Tolman dated April 26, 1938, from your police report, is that information correct?

A. It is.

Q. When did you reply to that application?

A. April 27, 1938.

Q. One day after you received it, is that a fact? And you denied it because you, in your best judgment, determined that that meeting would result in disorder and disturbance?

A. Right.

Q. Now, as a matter of fact, Mr. Commissioner, didn't Mr. Tolman, after the receipt of your denial of a permit, write you a letter in which he accepted the denial of the permit because it would tend to create disorder and disturbance and say that he hoped that in the future those meetings may take place and they will not create violence and disturbance? I show you the letter of April 28, 1938.

MR. HERSHENSTEIN: That was taken right from your exhibit, that is part of their exhibit, if your Honor please.

Q. Isn't that a fact?

A. That's right.

Q. And in that letter of April 28, 1938, Mr. Tolman apologized for using ruled paper and says "Your two communications received and contents noted. I shall consider your denial as an admission that expectant disorder and disturbance would come from someone other than a Socialist. I will not attempt to hold the desired meeting at Journal Square until such times that we feel sure that the police department will be able to maintain order even as a gesture towards we Socialists who always voted for increases of their salary. Wishing you good health and the greatest of all blessings and looking forward to renewal of permits, I am, Very truly yours, William Kane Tolman."

MR. FRAZER: Is that ironic?

Q. Now, consider the next application.

THE COURT: We will consider it in ten minutes.

(Recess.)

(Following a short recess.)

Q. The next application, Commissioner, in the same exhibit, is from the Hudson County Committee for Labor Defense and Civil Rights. That bears the stamp of your office 1:20 P. M. May 24, 1938. The application itself is undated. Is not that a fact?

A. That is right.

Q. Will you look at the carbon copy annexed and tell me when you acted upon that application? What date?

A. On the 25th.

Q. The next day?

A. The next day.

Q. And in this refusal, Commissioner, you state, after reviewing the fact that this application contains the statement that—I quote now from the application—"We are specifically asking for Pershing Field as a place which will not interfere with the trade of our townspeople. As an organization composed of Hudson County groups we are solicitous of the business and welfare of Jersey City. The chairman of our organization is John Longo."

You state, do you not, that "You cannot be very solicitous about the business and welfare of Jersey City when you are endeavoring to hold a meeting which you know will create disorder and riot. Thousands of our citizens resent Congressman O'Connell's and Congressman Bernard's tour of the battlefields of Spain as the guests of the Communist Party and the use which they made of their official position by creating the impression upon the Red troops that all America was in sympathy with their cause. Our citizens resent this conduct as un-American. They also resent Mr. O'Connell fighting the cause of the Communists

who are directing the C. I. O. activities and those radicals who are seeking to invade Jersey City and destroy our property, our industries and business. Knowing that the C. I. O. has been prevented from gaining a foothold in Jersey City, Mr. O'Connell rallies to their aid by raising the cry of denial of free speech and by his every act is seeking to pave the way for the C. I. O. and their destructive forces entering our city. In order to gain publicity for himself he is again using his official position as Congressman merely as a camouflage and to dignify his parading as a champion of the rights of free speech.

"My investigation also disclosed that your Committee, of which John Longo is chairman, is a branch of the International Labor Defense, the National president of which is Vito Marcantonio, who was counsel for John Longo in a recent criminal court action. The International Labor Defense, I am informed, is part and parcel of a Communist society known as the 'Red Aid of Russia' which has established branches all over this country. These organizations always come to the defense of Reds, Radicals and Communists who violate the criminal laws of our country."

And therefore you state you deny this permit; are those the facts?

A. They are.

Q. And are those the facts upon which you based your judgment that this permit should be denied?

MR. ERNST: If your Honor please, I object to the question because the question implies that those are facts and the most that can be said is that those are the statements that this witness thought to be facts.

MR. HERSHENSTEIN: I will change my question.

Q. The statements contained in this communication are statements which you thought and believed to be true?

A. That's right.

Q. And they are the facts upon which you based your refusal of a permit?

MR. ERNST: No, no, and your belief in those statements, whether true or not, was the basis of your determination.

MR. HERSHENSTEIN: Perhaps I will change it again.

Q. Are these the facts upon which you state you based your refusal?

A. That's right, they are.

Q. The next application, Mr. Commissioner, is an application of May 3, 1938, made by the Catholic Worker of 115 Mott Street, New York, and the person who signs the communication is William M. Callahan, who describes himself as managing editor. I ask you to refer to the carbon copy annexed to this application and state to us please when you acted upon it.

A. I received it on May the 3d and answered it on May the 4th.

Q. The very next day?

A. Yes.

Q. And in your communication to the Catholic Worker you asked for further information before you could pass upon this application?

A. Right.

Q. Did you receive the further information which you sought?

A. If I received it the letter is there.

Q. And if it isn't there you have not received it?

A. I haven't received anything from them.

Q. And is that the reason, Mr. Commissioner, that this application was not acted upon?

A. That's right.

Q. The next application is the application of the Hudson County Committee for Labor Defense and Civil Rights. There are two applications by this same organization, one bearing date May 3, 1938, which requests a mass meeting at Journal Square for the evening of May 5th at eight o'clock, and the other an application of May 5th requesting another meeting for another date, changed to May 7,

1938. I ask you to refer first to the original application bearing date May 3, 1938, and ask you from the carbon copy annexed to that application and now in evidence on what date you replied to that application.

A. I received it on May the 4th and I answered it on May the 6th.

Q. And in your letter of May 6th you write: "The speakers whom you list, namely, Congressman Jerry O'Connell and John T. Bernard, are personally obnoxious to the great majority of our citizens because of their Communistic endeavors. There has been considerable agitation by veteran and labor organization, War Mothers and Gold Star Mothers and other civic groups in our city, as a result of their announcement in the press that they will appear here next week."

Were these the facts upon which you based your discretionary powers to refuse a permit?

A. They were.

Q. Now, just going back to the Hudson County Committee for Labor Defense application, I think by reference to your letter of May 4, 1938, you are treating this application as one, and to refresh your recollection I will now read to you from your carbon copy of letter dated on this same date as the denial of the permit on May 4, 1938, in which you state:

> "I am in receipt of your application for a permit for a meeting which you state is to be held Saturday, May 5th, at eight o'clock. I do not understand whether you mean Saturday evening or May 5th. Saturday is the seventh. However, before granting you your permit, in order to make my investigation it will be necessary for you to send me promptly a list of the speakers who will address this meeting and the names and addresses of the officers of your association."

Now, this letter of May 5, 1938 was in reply to your letter of May 4th, in which she corrects the date, Miss Frances McKee, as being May 7th.

A. That is right.

Q. You treat that as one application, however?

A. I do. That's the way I treated it.

Q. Now, Mr. Commissioner, that disposes of all of the applications which were filed with you and which concern denied or action withheld, except the two applications, one by Mr. Spaulding Frazer on behalf of the CIO, the application and correspondence being marked as Exhibit P-13, and the application made by Samuel L. Rothbard on behalf of the Civil Liberties Union, which is marked Exhibit P-12?

A. That is right.

Q. Now, taking up these two, in order that we may complete the applications, I refer first to Exhibit P-13, the application by Mr. Frazer on behalf of the CIO. That application bears date from the exhibit December 23, 1937, does it not?

A. It does; December the 23d.

Q. I said that, didn't I?

A. Was it? I thought you said December 27th.

Q. December 23, 1937. And in that application Mr. Frazer writes that:

> "The Hudson County Organizing Committee of the C. I. O. desires to hold an open-air meeting in Jersey City, at any public place within a reasonable distance from the center of the city which you may assign for such meeting."
>
> "The purpose"—I am now skipping—"the purpose of the meeting, to which the public will be invited, is to petition the Board of Commissioners of Jersey City to modify Jersey City's leaflet distribution ordinance and its ordinance on public meetings, and to take appropriate action against intimidation by certain officers of your city of owners of halls who, but for the fear of incurring official hostility, would be willing to rent their premises for meetings of the Hudson County Organizing Committee.

"The permit is requested for the evenings, between eight and ten p. m., of either Wednesday, December 29th, or Thursday December 30th, 1937.

"The meeting will be addressed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri, and John Kiesler."

Will you please state on what date did you reply to Mr. Frazer with regard to that application?

A. I received it on December the 23d and I answered it on December the 27th.

Q. And on December the 27th you write that you must "make investigation of all the facts and circumstances" before deciding whether it shall be proper for you to refuse or to grant the permit; isn't that a fact?

A. Right.

MR. ERNST: If the Court please, would Mr. Hershenstein mind reading, so that we don't get it out of its context, the last paragraph of the Spaulding Frazer letter?

MR. HERSHENSTEIN: I will be very glad to do so.

MR. ERNST: Of December 23? I don't think he omitted to read it intentionally, but it all goes together.

MR. HERSHENSTEIN: Mr. Frazer, or Mr. Ernst, rather, wants me to read further that Mr. Frazer in his letter states in the last paragraph:

"I would appreciate receiving the permit by return mail, since, as you understand, it will require several days' advance notice properly to complete arrangements for the meeting."

Now, our ordinance, if your Honor please, that is a matter of record, provides that you must receive at least seventy-two hours' notice.

THE WITNESS: Three days, I think it says.

Q. Three days, so that you could not issue it promptly anyhow, could you, Commissioner?

A. No, I didn't.

Q. Especially when you wanted to undertake an investigation. And in your letter of December 27th, you state that you desire to undertake an investigation, do you not?

A. I do.

Q. And three days after, on December the 20th, 1937, did you reply to Mr. Frazer and act upon either the granting or refusal of this permit?

MR. ERNST: I believe you said the wrong date, Mr. Hershenstein.

MR. FRAZER: December 30th, I think.

THE WITNESS: December 30th.

MR. HERSHENSTEIN: Did I say——

MR. FRAZER: The 20th.

MR. HERSHENSTEIN: I beg your pardon.

A. Yes, I did. I answered it.

Q. And in your letter of refusal you set out, do you not, the facts upon which you based your statement as to why this permit should or should not be granted?

A. I did.

Q. And in your letter of December 30th you say that:

"On receipt of your letter, I sent you a communication dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all the facts and circumstances pertinent to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain veterans' organizations of Jersey City protesting against the granting of a permit to Roger N. Baldwin or to any members

of group he represents, to hold a meeting. The letter demanded that I withhold action on your application. I attach a copy of the veterans' letter to this communication and"

You state further:

"On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over 3000 persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of a permit. Violent disorder was threatened on the part of the veterans in case the meeting was held. Announcements were made from the floor—and these announcements had the approval of the meeting—that if I should refuse to honor the veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the veterans at the meeting.

"The Chamber of Commerce, representing the business interest of Jersey City, have gone on record against the granting of this permit.

"The Central Labor body of Hudson County has gone on record against the granting of this permit.

"Other bodies of citizens have opposed it, and individuals of influence in the community have protested to me against the holding of the meeting. Other facts and circumstances pertinent to your meeting, in addition to those herein called to your attention, convince me that the granting of the permit you request would lead to riots, disturbances and disorderly assemblage."

MR. ERNST: If your Honor please, it seems to me that there is no validity in cross-examination in reading

into the record documents which have already been introduced into evidence. They are fully in evidence. I don't see how they can be cross-examined upon as to the material in them.

MR. HERSHENSTEIN: I took a leaf out of Mr. Ernst's book, your Honor please. He has read line after line into evidence in his direct examination.

THE COURT: Commissioner Casey already read that letter in. I have no objection to hearing it twice, but he has already read it.

MR. HERSHENSTEIN: For the sake of continuity I think it should be permitted.

MR. ERNST: It seemed to me on cross-examination to reread what has been put in on direct was not proper.

MR. HERSHENSTEIN: I will try to curb that, if I can, but I think it is important, Mr. Ernst.

Q. Now, in refusing this permit——

MR. ERNST: May I ask what the purpose of the cross-examination is in respect to what you have read, that is, what are you going to break this witness down on, if that is the phrase?

MR. HERSHENSTEIN: I don't think I have to answer that question. He was asked questions on direct examination. I have a right to bring out the facts which I deem Mr. Ernst did not bring out on the direct examination.

THE COURT: I think, as a matter of fact, not to be technical about it, Mr. Hershenstein, you would have to make him your own witness for that purpose. I don't think you will deny that this witness told the truth. I thought he did. And, of course, the basis of cross-examination is to try to shake a witness, as I have always thought.

MR. HAMILL: May I say something?

MR. ERNST: Let's have one counsel, please.

MR. HAMILL: No, may I say something to the Court? The Court will rule on that. May I say something to the Court about this witness? This witness has been put on by the other side, not for the purpose of upholding him but for the purpose of breaking him down. Now the situation is reversed, he is our witness, he is one of the defendants whom we are defending, and it is not a question of our breaking him down; the real question is to have him explain, and if you want to use the term "to build him up." Now, isn't that the situation? He is not put up by the other side for the purpose of vouching for him but for the purpose of cross-examining him. In other words, what has gone on here has been a cross-examination and now a direct instead of what usually happens, a direct and then a cross-examination.

MR. ERNST: If your Honor please——

MR. HAMILL: This witness is now on direct examination; he is a defendant now defending.

THE COURT: Well, are there any facts that this witness testified to that you dispute?

MR. HAMILL: Well, counsel is explaining anything that he did say. I will say one thing in order to answer that question of your Honor's——

THE COURT: I am not trying to cut you down in your defense at all.

MR. HAMILL: No, I know you are not. Undesirables—persons undesirable, that has gone all through the record as if undesirable were used in the sense of distasteful. This witness has said "undesirable" means actually lawless or those who have expressed a

determination to be lawless and those he would deal with. Now, questions of that character, which were questions in the nature of cross-examination, ought to be explained by the witness on this which is really his direct examination, although very technically his cross-examination.

THE COURT: Mr. Hamill, I don't want to be technical at all. I have objected, for instance, to your strict application of the hearsay rule. I think I am rather an untechnical person. I have been criticised for being untechnical, so that I don't want to be technical and fuss around with rules that don't seem to me, at least in a case of this character where there is no jury, of much utility. I am inclined to give great latitude.

MR. HAMILL: I know you are. Then why all this objection about reading it again into the record?

THE COURT: Because we have had it once.

MR. HERSHENSTEIN: That has never been read in as I have read it in.

MR. HAMILL: If counsel thinks it ought to be reread he ought to be allowed to reread it.

MR. ERNST: May I betwixt Gallagher and Shean state my position?

MR. HAMILL: No, you are betwixt Scylla and Charybdis and you are in a bad way.

MR. ERNST: I am flattered by the army of adversaries. May I just state my simple position?

MR. HAMILL: It isn't because you are complaisant but because you are a little pestiferous.

MR. ERNST: Are you finished, Mr. Hamill?

MR. HAMILL: Oh, yes, I wouldn't interrupt you for the world.

MR. ERNST: May I state it seemed to me that there would be no end of Mr. Casey on the stand if there was to be read into the record the correspondence in these cases. We are bound by the correspondence, your Honor, we introduced it; we bound ourselves by this witness of ours, by his testimony, that what he said in those letters was the basis of his judgment, whether they were true statements or not. That was the basis and all I wanted to do was avoid the necessity of having to read again, on my part, the balance of the correspondence that Mr. Hershenstein won't read.

MR. HERSHENSTEIN: May I say this to your Honor——

THE COURT: We don't want to spend the time reading it all, do we?

MR. ERNST: Yes, that is what he wants to do.

MR. HERSHENSTEIN: May I say this: Mr. Ernst has, in his direct examination, over and over again impugned the honesty and the honest determination of this man who was charged with the duty of passing upon these permits.

THE COURT: I don't think so. I disagree with you. I don't think anyone has impugned Commissioner Casey's veracity. I haven't heard it and I have paid close attention. They may have disagreed with his policy but they certainly have not impugned his veracity.

MR. HERSHENSTEIN: I don't mean that, sir, but Mr. Ernst has said that the mere fact that a commissioner denied a permit by fomenting these meetings and intimated, if your Honor please, that Mr. Casey and others have brought about these meetings, and thereby charging him directly with giving a decision in these matters, not based upon actual facts but as a mere whim, I say we have a right to show the facts upon which the Com-

missioner did base his determination, and those facts are set out in the correspondence.

THE COURT: Well, if we have to have it all read we will have to have it all read. I think it is a great waste of time.

MR. ERNST: My point is does he mean, your Honor, facts that are not in evidence or does he mean self-serving declarations contained in letters which were introduced? Now, if there are additional facts that are not in the letter we would like to get them.

MR. HERSHENSTEIN: We will show additional facts.

MR. ERNST: We asked for protests and it took days to get them.

MR. HERSHENSTEIN: Your Honor, I won't be guilty of clogging the record or reading into the record——

THE COURT: No, but one fact on which Commissioner Casey based his decision would seem to require depositions in Spain.

MR. HERSHENSTEIN: I shall give you those facts in a minute. I have a right to show the basis of his determination and if the facts he states are the true facts, he has a right to state them.

THE COURT: No, but did you hear that, Mr. Hershenstein, one of the facts on which Commissioner Casey based his opinion—and I am not criticising him for basing it—seemed to require if we were to prove the ultimate fact depositions in Spain?

MR. HERSHENSTEIN: I am going to come to that in a minute.

Q. Now, Commissioner, referring to the last application—and that is the application by the Civil Liberties Union, Exhibit P-12, that is, the application made by Mr.

Rothbard under date of December 17th—in that application he asks for a meeting on one of four days, he asks for a meeting in the Plaza in front of the Court House located in Jersey City. Have you any jurisdiction over the Plaza in front of the Court House?

A. I have not.

Q. That is county property?

A. That is in the Board of Freeholders.

Q. When did you reply to that application? I show you the carbon copy.

A. December the 20th.

Q. That is three days after the application was received?

A. Yes.

Q. And in which communication you advised that you were making an examination?

A. That's right.

Q. On December the 22d you received a letter of correction, did you not, from Mr. Rothbard's office in which he states that he inadvertently mentioned the year December, 1938, instead of December, 1937?

A. That's right.

Q. You also received from Mr. Rothbard a letter of December the 20th in which he states the speakers who will speak, who are to speak at this meeting, and quoting from the letter Mr. Rothbard writes: "more particularly also the speakers will be Congressman Maverick, Congressman Jerry O'Connell, Congressman Allen and Morris L. Ernst." That is a fact, is it?

A. That's right.

Q. You replied to the letter, did you not, under date of December 22?

A. I did.

Q. Two days after. On December the 28th you received another letter from Mr. Rothbard in which he requests, in view of the fact that the last date for the meeting had gone by, the right to have a meeting during the week

of January 3, 1938, at any place you will designate agreeable to his client?

A. That's right.

Q. Was there any further correspondence after December the 28th by Mr. Rothbard with you or by you with him?

A. There was not.

Q. After the failure to do anything further, after the letter of December 28th, did they continue the request for permit or negotiations for permit with you?

A. It ceased altogether, to the best of my recollection.

Q. Now, dealing first with this last application of the Civil Liberties Union in reply to your request as to who the speakers were to be, you were advised that one of the speakers was Congressman Maverick, and as a matter of fact, Commissioner Casey, on the stand the first day of your examination you stated in court, did you not, what the contents of this application was in reply to Mr. Ernst's question?

A. I did.

Q. Did you receive a telegram from Congressman Maverick dated June 4, 1938, bearing upon the fact as to whether or not——

MR. ERNST: Your Honor please——

MR. HERSHENSTEIN: Just a minute.

MR. ERNST: —I don't want him to answer.

Q. Just a minute—whether or not he was actually to be a speaker and in which he states "You are reported"——

MR. ERNST: Now, your Honor please——

MR. HERSHENSTEIN: Now, you are not before a jury, Mr. Ernst, let me finish my question.

MR. ERNST: No.

MR. HERSHENSTEIN: Are you afraid to have the telegram read?

MR. ERNST: No.

MR. HERSHENSTEIN: I have a right to read it and if he objects to the question——

MR. ERNST: There is no proof there was a telegram sent by Maury Maverick; there is no proof. If you want Maury Maverick here or will let me read the telegram he sent me when I found out you got that, we will have them both in.

MR. HERSHENSTEIN: All right.

MR. ERNST: Will you consent?

MR. HERSHENSTEIN; Then you can disprove it.

MR. ERNST: No, will you consent to the reading of the two telegrams signed Maury Maverick?

MR. HERSHENSTEIN: I consent to nothing.

MR. ERNST: Your Honor, we object to it.

MR. HERSHENSTEIN: We have this telegram and I intend to read it into the record.

MR. ERNST: Your Honor please, I object to the introduction of any telegram purporting to be sent by anybody not in the courtroom unless there is proof that Maverick was the signer of the telegram sent out.

THE COURT: Certainly if one goes in the other must.

MR. ERNST: That's all I am asking, perfectly happy if you take them both without Maverick or we can get him here.

MR. HERSHENSTEIN: I don't care what you do but I am going to have this telegram.

MR. ERNST: All right, if your Honor will rule that a telegram which I got from Maverick may also go into evidence, both of them improperly if they are not admissible——

MR. HERSHENSTEIN: May I ask counsel how he knows we got this telegram?

MR. ERNST: I heard of it through Mr. Maverick.

MR. HERSHENSTEIN: Oh, pardon me.

MR. ERNST: I know about it.

MR. ERNST: Moreover, your Honor, they are both dated around June 4th or 8th, which is somewhat after the date of the application.

MR. HERSHENSTEIN: Oh, I know that.

MR. ERNST: But I would just as soon have both go in. However, no one goes in without the other.

MR. HERSHENSTEIN: It bears directly on his testimony concerning——

THE COURT: Of course, I need hardly tell you, Mr. Hershenstein, that the telegram cannot go in under the strict rules of evidence.

MR. HERSHENSTEIN: I understand that.

THE COURT: So that unless they are waived, I can't admit it.

I am glad to see the Congressman apparently patronizes both telegraph companies.

MR. HERSHENSTEIN: I shall withdraw the offer.

MR. ERNST: I am happy to have a reciprocal waiver for both telegrams.

MR. HERSHENSTEIN: I shall withdraw the offer for the present.

Q. Now, Commissioner, the Civil Liberties Union application and the CIO application were made approximately the same time; that is, the latter part of December, last year?

A. That is right. The dates speak for themselves.

Q. All of the other six or seven applications which were offered in evidence were all admittedly approximately during the month of May, 1937, isn't that the fact?

A. That's right.

Q. Now, Mr. Ernst in his examination of you seemed to limit the number of protests which you received prior to January the first, 1938, with regard to the applications for permits of the CIO and the American Civil Liberties Union to three protests. Isn't that a fact?

A. Yes, that is right.

Q. As a matter of fact, however, prior to December, 1937, had there been any public demonstration from which you were able to observe the attitude of the people of Jersey City with regard to the granting of these permits?

MR. ERNST: Which permits, may I ask? Which ones?

MR. HERSHENSTEIN: The two permits; the Civil Liberties Union and the CIO.

MR. ERNST: And these are meetings prior to what?

MR. HERSHENSTEIN: Yes.

MR. ERNST: Prior to what?

MR. HERSHENSTEIN: Prior to the first of the year.

MR. ERNST: And prior to the making of the application? I want to get the date.

MR. HERSHENSTEIN: At about the same time, prior to the date upon which the meetings were to be held.

MR. ERNST: And after the date of the application?

MR. HERSHENSTEIN: Maybe prior or between the date of the application——

MR. ERNST: Well, I am sorry. Go ahead. I just wanted to get the date of those meetings.

A. There was a public demonstration around the 28th, I think it was, of December, in the Armory.

Q. Yes.

A. The veterans——

Q. By the veterans?

A. Yes.

Q. And you had received also, had you not, the resolutions which you refer to in the correspondence with Mr. Frazer, by the various organizations, copies of which were sent to Mr. Frazer?

MR. ERNST: May I hear that question, please?

(Pending question read by the reporter.)

MR. ERNST: If your Honor please, not only the resolutions themselves, but the dates speak for themselves approximately as to their receipt.

MR. HERSHENSTEIN: All right.

MR. ERNST: My recollection is that they were not received by that time.

MR. HERSHENSTEIN: Well, the record will show it.

MR. ERNST: Yes.

Q. And you had known from the reports you read in the newspapers by your testimony concerning the activities of Mr. Carney, had you not?

A. I had.

Q. You knew the occurrence of November 29th by Mr. Carney and his representatives in Jersey City?

A. I did.

Q. Did you take all of those things into consideration?

A. I did.

Q. When you passed upon the application?

A. I did.

MR. ERNST: Which application, may I ask?

MR. HERSHENSTEIN: The Civil Liberties Union and the CIO.

MR. ERNST: May I ask whether the question really means—if so, I would like to object—that Mr. Carney's distribution of pamphlets in Jersey City was taken into consideration with respect to a Civil Liberties Union application, or CIO?

MR. HERSHENSTEIN: I asked of both. The witness says that the statements he read concerning Mr. Carney——

MR. ERNST: Yes.

MR. HERSHENSTEIN: The acts which Mr. Carney's representatives committed in Jersey City on November 29th.

MR. ERNST: Yes.

MR. HERSHENSTEIN: The meetings which were held by these various organizations—whether all of these things were factors in his determination for the refusal.

MR. ERNST: Of what.

MR. HERSHENSTEIN: Of the CIO permit and the holding in abeyance of the Civil Liberties permit.

MR. ERNST: Oh.

A. I took them all into consideration.

Q. Now in denying the CIO application, which Mr. Spaulding Frazer made, did you exercise your best judgment and best discretion as to whether or not the granting or refusal of this permit——

A. I did.

Q. —would create disorder or riot?

A. I did.

Q. Now, as to the other applications, which were all made during the month of May, with the exception, I think, of the two Burkitt applications, which were April 22d——

MR. ERNST: Yes.

Q. —had there been occurrences between December and May, such as meetings and other resolutions, which you took into consideration in forming your determination as to whether those permits should or should not be granted?

A. I took everything into consideration.

Q. Now referring particularly to that, we need not waste much time on it, was there a large meeting held in the Armory on the evening of January 6, 1938?

A. There was.

Q. And who sponsored that meeting, sir?

A. The Chamber of Commerce.

Q. Were you present?

A. I went there, yes.

Q. Will you please state to the Court how many people you estimate were inside and outside of that Armory?

A. About 40,000 people.

Q. Will you state to the Court whether that meeting was a partisan or a non-partisan demonstration?

A. A non-partison demonstration.

Q. Were there any speakers of the Republican Party addressing the audience?

A. There was.

Q. Who was it?

A. Judge Carey——

MR. ERNST: If your Honor please, may I ask do you mean bi-partisan or non-partisan?

MR. HERSHENSTEIN: I will say un-partisan.

MR. ERNST: What?

MR. HERSHENSTEIN: Un-partisan.

MR. ERNST: Un-partisan.

MR. HERSHENSTEIN: Everybody.

MR. ERNST: All parties?

MR. HERSHENSTEIN: All parties, by all parties.

MR. ERNST: Communists, socialists, all parties?

MR. HERSHENSTEIN: There may have been——

MR. ERNST: All right, go ahead.

Q. And did that meeting, Commissioner, form a basis with regard to the attitude of the people of Jersey City, and was it used by you in helping to make up your mind as to whether these permits should or should not be granted?

A. It was.

Q. Now in addition to those things which occurred between——

MR. ERNST: May I ask, the question was whether the Armory meeting——

MR. HERSHENSTEIN: Yes.

MR. ERNST: —had a relationship to the denial of these permits?

MR. HERSHENSTEIN: Yes.

THE WITNESS: Not them permits. That was the——

MR. ERNST: The two particular permits.

MR. HERSHENSTEIN: I refer to the May permits.

MR. ERNST: They had no relation to these two applications.

MR. HERSHENSTEIN: Of course not.

MR. ERNST: These are after.

MR. HERSHENSTEIN: This is a continuation, though, of what had occurred.

MR. ERNST: All right; it was after.

Q. Now in addition to those things which you have described occurred, I now refer you, Commissioner, to some of the letters or protests which, although offered, were not

referred to by Mr. Ernst, and which will increase the number of protests which were received by you prior to the first week in January or around the first week or two in January, 1938. I refer now to the communication which you received from the Association of the Sons of Poland, bearing date December 31, 1937, in which they state—I will paraphrase—that they are an organization of 16,000 members, and they resolve that this association approves the stand taken by the Chamber of Commerce of Jersey against all subversive and communistic movements directed against our democratic form of government.

MR. ERNST: If your Honor please, I have only this objection, that I want the record clearly to indicate that those instruments can have no possible bearing on the denial of permits to the plaintiffs in this suit.

MR. HERSHENSTEIN: I am not so sure about that.

MR. ERNST: Well now we will have to have the date on each one.

MR. HERSHENSTEIN: I have given you the date.

MR. ERNST: And if it is after the denial of the permit——

MR. HERSHENSTEIN: I have given you the date.

MR. ERNST: If it is after the denial of the permit, I will move to exclude it, except on the possible theory that we are approving a plan or conspiracy, and that these letters go to that, rather than the question of the denial of the permits, because the permits were denied, finished, before these letters.

MR. HERSHENSTEIN: Now, wait. That is not the fact.

MR. ERNST: Get the fact.

MR. HERSHENSTEIN: Mr. Ernst himself stated that the Civil Liberties Union application was not denied

As a matter of fact, their letter of December 28th makes an application for a permit during the first week of January, which will take us to about January the 7th, and therefore all resolutions and all protests would be evidential as to that particular resolution.

MR. ERNST: Except, your Honor, for the evidence which I elicited from the witness, that he never took any position or did anything in the matter after his last letter.

MR. HERSHENSTEIN: Well, we say——

MR. ERNST: And you can break him down——

MR. HERSHENSTEIN: That isn't what he said. He was asked whether Mr. Rothbard did.

MR. ERNST: No, no——

MR. HERSHENSTEIN: And he said Mr. Rothbard did nothing further about it.

MR. ERNST: I asked him whether he did, and then I asked him, "Would you today deny it?" He said, "Yes." I said, "When did you make up your mind?" He said, "I never did anything between then and today."

Now, if you want to prove he didn't tell the truth, it is admissible in cross-examination.

MR. HERSHENSTEIN: If Mr. Rothbard wanted to drop out, you can't blame this witness for dropping out.

MR. ERNST: I am not blaming anybody.

MR. HERSHENSTEIN: All right.

MR. ERNST: He said there was nothing further done about it. If it is cross-examination and you want to break him down, all right.

MR. HERSHENSTEIN: I press my question.

Q. That is a fact, is it not, that on December 31st you received this resolution?

A. I received it, yes.

MR. ERNST: What date?

MR. HERSHENSTEIN: On December 23d—I beg your pardon.

MR. ERNST: December 31st you said.

MR. HERSHENSTEIN: December 31st.

MR. ERNST: That is right.

Q. On December 23d, 1937, which was prior to any refusal, did you receive from the Chamber of Commerce of Jersey City a letter in which they describe the attitude of the Chamber of Commerce of Jersey City?

A. I did.

MR. ERNST: Are those letters in evidence, Mr. Hershenstein?

MR. HERSHENSTEIN: I beg your pardon.

MR. ERNST: Are they in evidence?

MR. HERSHENSTEIN: Those are in evidence, I think.

MR. ERNST: No, they are not in evidence.

THE CLERK: They were marked for identification.

MR. ERNST: They were marked for identification.

MR. HERSHENSTEIN: No, I think they were marked in evidence. They were taken out of these envelopes.

MR. ERNST: Is the envelope marked in evidence?

THE CLERK: For identification.

MR. ERNST: I will be glad to have them go in. My impression was they were marked for identification. If they are not in evidence, then I suggest that Mr. Hershenstein, instead of referring to an attitude quote from

the letters with reference to the plaintiffs in question, the CIO or the Civil Liberties Union.

MR. HERSHENSTEIN: I did already quote the resolution of the Association of the Sons of Poland in which they are against all subversive and communistic movements directed against our form of government and——

THE COURT: I don't think anybody is not against that, Mr. Hershenstein.

MR. HERSHENSTEIN: Pardon me?

THE COURT: That is unanimous, I think, in this country.

MR. ERNST: That is not a protest against this permit.

Q. I refer now to the letter of December 23d, of the Chamber of Commerce in which they say:

"We now desire to go on record in the labor controversy involving our community," and so as not to encumber the record I go now to page two of the letter in which one of the preambles of the resolution states: "Whereas, because their invasion of the city would mean destruction of the industries and business and the consequent loss to employees and their families and to business and their employees, be it resolved, therefore, that we express to Mayor Hague our heartfelt expression of appreciation and gratitude for the efforts he is making on behalf of the people of Jersey City."

Did you understand from those preambles that the invasion of Jersey City which they make reference to was the invasion of Mr. Carney, which he threatened and which you read in the newspapers?

A. Well, that is what I thought it was.

Q. Now the Jersey City Real Estate Board on December 14th, which is prior even to the CIO application, was it not?

A. It was, yes.

Q. December 14, 1937. They had a meeting in which they resolved "that this Board go on record in approving the action heretofore taken by the Honorable Frank Hague, Mayor, and the Commissioners of the City of Jersey City in their attitude toward and in their handling of the conditions arising as a result of the invasion of the City of Jersey City by the CIO and the Communist Party."

That refers, does it not, to the CIO, which made the application for a permit?

A. That is right.

Q. On December the 16th, 1937, which was prior to either the CIO or the American Civil Liberties Union application, you received this from the Jersey City Lions Club, did you not, enclosing a resolution of that body?

A. Let's see them. I didn't receive that.

Q. That is so, isn't it?

A. No. I didn't receive that.

MR. HERSHENSTEIN: That is part, if your Honor please, of the exhibit, and in view of the fact it is the exhibit——

MR. ERNST: It is not an exhibit.

Q. Did you see the resolution?

A. Just a minute.

Q. Did you see the resolution?

A. I saw the resolution——

Q. Will you look at it and see whether or not you did? Here it is, in back of it. Did you see this resolution? Read it.

THE COURT: We will adjourn now. Do you want the Commissioner back in the morning?

MR. HERSHENSTEIN: I am afraid I shall have to have him back, yes, your Honor. I thought we would get through early tonight.

(Thereupon an adjournment was taken to Thursday, June 9, 1938, at 10:30 A. M.)

Thursday, June 9, 1938.

Case continued.

Appearances as before.

DANIEL CASEY resumed the stand.

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Commissioner Casey, did you confer with me last night preparatory to my examining you on the balance of your direct examination today?

A. You did.

Q. And at that time did I have with me the testimony which you gave on the three days, is it, up to now, that you have been on the stand?

A. Yes, sir.

Q. I call your attention to your testimony at page 561, which I think, your Honor, is the session of June 3d. At page 561, Commissioner, I will read the question propounded to you by my opponent—well, I will go to 560 to keep the context:

"Q. I would like to know what your impression was from the newspapers.

"A. I don't feel like expressing my opinion.

"Q. You don't like to. Now, there is a fourth person on that application, a man named Ernst. Did you look up whether he had spoken around at street-corner meetings, and whether there had ever been disturbances?

"A. I never heard of the gentleman until I saw his name on the application."

Now, let me interrupt you at this moment. You so testified?

A. Yes, I did.

Q. Let me interrupt you at this moment to show you a part of exhibit—is that P-12?

MR. HERSHENSTEIN: All P-12.

Q. (Continuing.) A part of Exhibit P-12, a letter on the stationery of Samuel L. Rothbard, addressed to you, a letter addressed to you, and that part of the letter which says:

"The speakers will be Congressman Maverick, Congressman Jerry O'Connell, Congressman Allen and Morris L. Ernst."

Do you remember receiving that letter?

A. I do.

Q. Now that is dated, is it not, December 20th?

A. It is.

Q. I call your attention further to this testimony which you gave on the aforesaid date:

"So he was not stamped as not being allowed to come into Jersey City, in your mind, because of being a Red or a radical or dangerous, is that right, December 22nd?"

A. That is right.

Q.

"Answer: I forgot all about Mr. Ernst at that time.

"Q. What?

"A. I forgot all about him. I thought you were out of the picture.

"Q. December 22nd, this is. At that time was there anything in your mind that would lead you to believe that the fourth speaker, Ernst, would, by what he would say at a meeting, create a disturbance?

"A. Not at that time, no, sir."

Now, during conference with me last night did you volunteer to me that you wanted to correct that date?

A. I do—I did.

Q. And why? What did you show me that prompted you to that correction?

A. A clipping in the *Jersey Journal* with a big streamer headline on it pertaining to a speech that Mr. Ernst made in Washington at the Lawyer's Guild.

Q. Have you——

A. In reference to—it is here; I told my chauffeur to bring it out here. I guess he is out in the hall there.

Q. Will you get it for me? Is there a sergeant-at-arms available?

MARSHAL MCDERMITT: Yes, there is. What is the gentleman's name, Mr. Casey?

THE WITNESS: His name is Scanlon; he ought to be in here. He may be down in the car.

Q. While we are waiting, if your Honor please, I could go to another point of his testimony, unless you wanted to keep this together; I think I had better keep it together.

MR. MCDERMITT: Your Honor will appreciate the position, of course, that I am in. I wonder if the witness might go get it.

THE COURT: Certainly, if that is easier. Do you want to go get it?

THE WITNESS: If it is all right with you, your Honor.

(The witness temporarily withdrew.)

MR. MATTHEWS: I want to find my page of the record.

THE COURT: 562 was the page of the record, I think. 561 is where Mr. Ernst last referred to.

Q. My last question, as well as I remember it was, did you show me from your records a newspaper account which changed your mind as to the date that you gave in your testimony to Mr. Ernst?

A. I did.

Q. I show you a newspaper account which you have just taken out of an envelope which you produced, and ask you first of all what is that envelope?

A. That envelope is where I keep clippings of every month——

MR. ERNST: Every what? I didn't hear you.

THE WITNESS: Every month; I file them away monthly.

Q. Now——

A. And that's what I have been doing for the last, I guess, four or five months. Before that they were kept in a big book and pasted in there, and where they handle that book in headquarters now, I handle these in my office.

Q. What is the date of that clipping and from what newspaper is it?

A. It is from the "Jersey Journal" and it is dated the 18th of December, 1937.

Q. Now, on the 18th of December, 1937, did you see that clipping from that edition of the "Jersey Journal"?

A. I did.

Q. Did you read this: "C.I.O. leader talks of machine guns. Ernst bitter in attack on Mayor Hague. Counsel threatens new invasion of Jersey City in defiance of ban on C.I.O."

A. I read it, yes, sir.

THE COURT: May I see it?

MR. MATTHEWS: Your Honor, may I finish with it?

THE COURT: Oh, I beg your pardon.

Q. Did you read further in that clipping these words purported to be uttered by Mr. Ernst on the occasion of his speech at the Lawyers' Guild banquet or meeting in Washington: "You can——"

MR. ERNST: Your Honor please, I don't mind reading from the clipping, but I don't want the counsel to

testify "purported to be said by Mr. Ernst." Whether they are even purported to be said by Mr. Ernst ought to appear in the clipping and not in the mind of counsel.

THE COURT: What does the clipping say?

MR. ERNST: I don't know. Just read from the clipping instead of "purported to be said."

MR. MATTHEWS: I thought I was courteous to the gentleman.

THE COURT: Is it in quotation marks?

MR. MATTHEWS: Yes, quotes.

Q. Did you read this said by Mr. Ernst on that occasion?

MR. ERNST: Is that "said by Mr. Ernst," is that in quotes?

(Mr. Matthews shows clipping to Mr. Ernst.)

MR. ERNST: Where do you want to read from?

MR. MATTHEWS: "You can write all the statutes you want," that paragraph, "You can write all the statutes you want."

Q. Quotes from Mr. Ernst, that is not in the paper—"You can write all the statutes you please but if a mayor like Hague can tear them up you must go on a new tack. So far there has been no evidence of machine guns and I hope there will be none because I know we would be playing into the hands of Mayor Hague."

Do you remember reading that?

A. I remember, yes, I read the whole article.

Q. Now, in that same envelope, sir, under clipping dated December 20, 1937, did you find and show me this clipping headed "Says Ernst was quoted correctly"?

A. Yes, that is on the 20th.

Q. And did you read that clipping and did you read the following: "General Press Association special corre-

spondents for the Jersey Journal at Washington today declare that Morris Ernst, C. I. O. counsel, had been correctly quoted in its dispatch to the Jersey Journal Saturday reporting speech in which Ernst assailed Mayor Frank Hague and referred to machine guns. The speech was delivered at a meeting of the National Lawyers' Guild. Ernst was quoted as saying"—I won't repeat it,—it is the same quotation, your Honor—then following: "The following telegram was received by the Jersey Journal today"—quotation in the quotation—"Ernst's quotes as sent by us and as published in Saturday's Journal are entirely accurate. They were taken down first-hand at the meeting by one of our staff members of twenty years' newspaper experience and transcribed immediately afterwards. Signed General Press."

Did you read that also?

A. I did, yes.

MR. MATTHEWS: I ask that the quotation which I read from Mr. Ernst be marked for identification and that the quotation that I read concerning Mr. Ernst's denial that he was correctly quoted be marked for identification.

MR. ERNST: May I just have counsel repeat the last statement? You are going to mark for identification what about my denial?

MR. MATTHEWS: The one in which you denied apparently that you were correctly quoted.

MR. ERNST: There is no clipping that has been read yet——

MR. MATTHEWS: I will be very glad to read it.

MR. ERNST: There is only, as I understand it, a clipping being read that somebody said that if I denied it I wasn't correct in my denial.

MR. MATTHEWS: I will be very glad to give you the denial.

MR. ERNST: Do you find a quote there from me denying it?

Q. Will you find it right there?

THE COURT: May I ask who is the General Press Association? Maybe some of our friends of the press might state what is the General Press Association.

MR. MATTHEWS: Can any of you gentlemen help the Court?

A NEWS REPORTER: I never heard of it.

MR. STEVENSON: (A. P.) Special correspondents for the "Jersey Journal" who cover local news that happens in Washington.

THE COURT: Do you mean it is just their own correspondent there?

MR. STEVENSON: Well, they are correspondents for the "Jersey Journal" who cover local news that happens in Washington for various newspapers.

THE COURT: They are not like the A. P. and the U. P.?

MR. STEVENSON: It is a special service those newspapers buy.

MR. MATTHEWS: I don't think at this stage, if your Honor please, since I haven't the information and since it is a press association, that we had better consider anything except the kindly information given by that gentleman, but I wouldn't want to consider that a General Press Association which has as substantial a newspaper as the "Jersey Journal" as a correspondent wouldn't be something to be reckoned with.

THE COURT: I am not relying on them.

MR. MATTHEWS: Oh, I see.

THE COURT: I am just inquiring who they are.

MR. MATTHEWS: Thank you.

THE COURT: That is not evidence, of course; that is just a colloquy with the Court.

MR. MATTHEWS: This newspaper man—apparently his newspaper is not a member of the General Press Association, because his risibilities were aroused.

THE COURT: He is an A. P. man, if you want to know who he is.

MR. MATTHEWS: No. Thank you, Judge. It doesn't make any difference who any of them are.

THE COURT: You like them all then?

MR. MATTHEWS: Yes, your Honor. They all have a job to do and I like to help them if I can, but never to curry their favor.

THE COURT: Did you hear that, gentlemen?

MR. MATTHEWS: Yes, they know; the local boys, too.

Mr. Ernst has just spoken to the Court by way of objection as to my characterization of the second paper I wanted to mark for identification. In order to remove what might be an objection, I find in the same clipping from the same paper from which I just read, this statement:

"In Sunday's newspapers Mr. Ernst was quoted as giving two different versions of his reference to machine guns. One paper stated that 'Mr. Ernst denied he had said as reported "I hope there will be no evidences of machine guns, because we would be playing into the hands of Mayor Hague." Instead, the lawyer insisted he had told the National Lawyers Guild conference 'Hague's tactics were undemocratic. He broke down the Constitution in a more serious way than if he had used machine guns, tear gas and spies.'

"Another newspaper carried the following: "quotation from Mr. Ernst—'What I did say was that where we have had a deprivation of civil liberties in other cities, we have also had examples of spies, machine guns and tear gas,' he (Ernst) explained. 'And I did say that Mayor Hague's methods have been those of the worst dictator.' Informed Saturday of Ernst's speech, Mayor Hague said, 'No machine guns will be used by Communist invaders in Jersey City.' "

It is those two papers that I ask to have marked for identification.

MR. ERNST: No objection.

(Marked Exhibits D-1 for identification and D-2 for identification.)

THE CLERK: The large clipping has been marked D-1 for identification and the short one D-2 for identification.

MR. MATTHEWS: Would your Honor like to see them?

THE COURT: No, not now.

MR. MATTHEWS: All right.

Q. The permit for the Civil Liberties Union at which meeting Mr. Ernst was to be a speaker was not granted because the request was not further prosecuted, was it?

A. That is right.

Q. Now, you said in your direct examination, when you were questioned about stopping automobiles and searching them, that that is the policy of the law enforcement department of Jersey City?

A. I did.

Q. What has been the result of that stopping of cars?

A. Different criminals picked up, men wanted for murder in other States, men with guns, blackjacks, brass

knuckles; men with criminal records, escaped prisoners. I could go on with quite a line, but can't specify just——

Q. All right, can you give us a salient example of where a gentleman was picked up who had a tie-up with the CIO?

A. Yes, sir; Patrick Whelan was picked up on the Pulaski Skyway on February 6th, I think it was, with four other men in a car. They had a .45 calibre United States Army regulation gun in the car.

Q. And what was done, if anything, about that?

A. They were all held for the grand jury.

Q. And then what happened?

A. I couldn't tell you. I don't know anything about the case. They were picked up right coming into Jersey City on the Pulaski Skyway by the Hudson County police.

Q. Do you recall the names of any of them and their affiliations?

A. I have with me the pictures of the men that were in the car, and the records of the men.

Q. Will you tell me where I will find those?

A. I have them here.

Q. Oh, you have them in your pocket?

MR. ERNST: Would counsel mind indicating the date of this pick-up?

MR. MATTHEWS: February, he said.

MR. ERNST: February——

THE WITNESS: That's February 6, 1938.

Q. February 1938, you say?

A. This year, yes. There is the records and the pictures (producing).

MR. MATTHEWS: The witness produces, if your Honor please, and my opponents, four cards—five cards—one purporting to be the record of Bernard Weinkrantz, the second the card of one Patrick J. Whelan, the third the card of one Benjamin Field, a

other one the card of Jesse B. Suttka, and the other, the last one, the card of Charles Hensen.

Q. Were all of those named in these cards, all of those people, apprehended at the time you searched the car you speak of?

A. They were.

Mr. Ernst: If your Honor please, unless this witness searched the cars, this is not admissible, number one. Number two, if there is an intention to put in those cards, or the reason for them, I must object, because these are merely reports, I assume, written by somebody, without these people here——

The Court: I thought those were the criminal records, aren't they?

The Witness: They are the records.

Mr. Matthews: Criminal record cards, with the photographs.

Mr. Ernst: Are these the crimnial record cards in the court in Jersey?

The Court: In the Bureau of Identification, I think.

The Witness: The Bureau of Identification, the records from the Hudson County Police. Here is the records, if you want to look at them.

Mr. Matthews: The witness hands me, Mr. Ernst, the records (handing to Mr. Ernst).

Mr. Ernst: Is this all you are going to introduce?

Mr. Matthews: I don't know yet.

Mr. Ernst: No objection to these at all.

Mr. Matthews: Do you want to look at this, so if I do want to introduce it, you will know what it is?

MR. ERNST: Are these the same people?

Q. Are those the same people, Mr. Witness?

A. Those are the same people.

MR. MATTHEWS: May I continue while you look that over?

MR. ERNST: Yes, surely.

Q. The cards from which I have read the names, do they show the pictures of the men who were arrested in that car that you spoke of in February?

A. They do.

Q. On the back of these cards, I notice in addition to the names that there is a legend about the crime for which they were arrested?

A. Yes.

Q. And some other data.

MR. MATTHEWS: Did you look at that on the back?

MR. ERNST: Yes, yes, that's all right. No objection to those.

MR. MATTHEWS: Then at this time I would like to offer for identification all of these cards. There are five of them.

(Marked D-3, D-4, D-5, D-6 and D-7 for identification.)

Q. Now, you have handed me some other papers which I have just handed to counsel and which he has just handed back to me on the stationery of the Bureau of Criminal Identification, Hudson County Police, Hudson County, New Jersey. First of all, just answer my questions carefully. What are those records?

A. They are records where men had been locked up in different cities in the United States.

Q. Where does the information on the records come from?

A. The Bureau of Criminal Indentification in Washington.

Q. In Washington, D. C.?

A. Yes, sir.

Q. And how does it come, in original communication or how?

A. It is sent for. Fingerprints are taken in the city that the man is locked up in, sent to the Bureau of Identification in Washington. In four or five days the complete record of the man is sent back to the city those fingerprints are sent from.

Q. Now, is that the original communication that you received? Answer yes or no.

A. I didn't receive it, it come to the Hudson County Police.

Q. And who would be the gentleman to whom the information came?

A. It would come to Chief Dolan of the Hudson County Police.

Q. And he would be the one?

A. His office, yes.

Q. He would be the one who could identify it as the original document coming from the Washington bureau?

A. Yes, sir.

MR. MATTHEWS: There being a technical objection to my introduction of it without the proper proof, I will abide the arrival of the gentleman named Dolan.

THE WITNESS: I think that Dolan is sick, your Honor.

MR. MATTHEWS: May I have it marked for identification, your Honor, so that it may be identified when the witness goes on the stand?

THE WITNESS: Counselor, I think Chief Dolan has been sick; he might be back but the man that's in charge there is Inspector Neary there. If Chief Dolan is there it is all right, but I am not certain.

MR. MATTHEWS: Thank you, sir. There are five pages to this which we would like to be clipped and marked as one exhibit.

(Marked Exhibit D-8 for identification.)

MR. ERNST: May I see the cards that were introduced?

THE CLERK: D-3 for identification is a record of Weinkrantz; D-4 for identification Charles Hansen; D-5 for identification Jesse F. Suttka; D-6 for identification Benjamin Field; D-7 for identification Patrick B. Whalen; D-8 for identification are five slips marked as one exhibit. They are the criminal record sheets of the same five name in the pictures.

Q. Commissioner Casey, as head of the Department of Public Safety of the City of Jersey City was your motive in all of the matters of the denial of permits to speak a motive of protection of the people of Jersey City and the general welfare and peace of your community?

A. It was, yes.

MR. ERNST: I move to strike that out, the question of motive. I think he has already said it several times.

THE WITNESS: I think I answered that for Mr. Ernst.

MR. ERNST: His purpose is something different from his motive. If you ask his motive it opens a wide field.

MR. MATTHEWS: My friend has not only impugned his motive, he has called him a recalcitrant witness on several occasions.

THE COURT: I think "purpose" is the more accurate word.

MR. MATTHEWS: I don't want to analyze the psychic process but it seems to me motive goes behind purpose. However, I accept your Honor's suggestion

and the question may read "purpose," if your Honor will allow it.

Q. The reason I ask you that question is that I want to call your attention now to page 600 of the testimony. May I ask you to look at that. While you were on the stand Mr. Ernst said during your examination and during objection, and I ask you if you remember him saying it: "And we will tie that up"—meaning the question of Mr. Borah coming to Jersey City—"with a long line of applications, of changes of dates, of delays, of procrastinations, of run-arounds; and so there is no use of getting people for a date and then have him drag you over the date."

You heard that said, did you not?

A. I did, yes, sir.

Q. Now, how many permits or applications for permits were there actually made to you during all of the time concerning which you have been questioned by Mr. Ernst, December to May?

A. Well——

MR. ERNST: They are all in evidence.

THE WITNESS: They are in evidence.

Q. Well, there are approximately eight?

A. Well, I wouldn't say whether there is eight or five or six or seven there; they are there and offhand I couldn't say, counselor.

Q. In any of the applications did you delay answering beyond three days?

A. Not to my knowledge; I think I answered them right away. The applications can speak for themselves, counselor.

Q. Yes, that is a very good answer to me but I did want that before the Court.

MR. MATTHEWS: When Mr. Ernst is through with you you may go to Ireland.

THE WITNESS: Thank you.

MR. ERNST: Are you through?

MR. MATTHEWS: I am.

RE-DIRECT EXAMINATION.

By MR. ERNST:

Q. Mr. Casey, Mr. Hershenstein examined you and you were quoted as saying something in a letter about Congressman O'Connell. Do you recall the letter and the reference? This was the letter about the battlefields of France and Communists.

A. Yes.

Q. Did you happen to know at the time you wrote the letter that Congressman O'Connell had been elected to Congress on the Democratic ticket from his state, did you happen to know that?

A. Well, I know he is classed as a Democrat, elected, he must be a Democrat if he was elected there as a Democrat.

Q. I didn't ask you that, I asked you did you know at the time that you wrote the letter that Jerry O'Connell was a Democratic Congressman from his state. Did you know that at the time?

A. Yes, I know he was a Congressman.

Q. So your position is, I take it, that you can be a Democrat and a Communist?

MR. MATTHEWS: I object, if your Honor please.

A. Oh, well, now——

MR. MATTHEWS: Just a minute, please, Mr. Witness.

THE COURT: Does the letter say that Congressman O'Connell is a Communist?

MR. ERNST: I would like to see the letter.

MR. MATTHEWS: Give me those exhibits now for Mr. Ernst. May I, while they are looking for that, press my objection that this is not a political case in the sense of a party case, unless you want to call the Communist Party a party.

Q. You said in your letter that the people of Jersey City also resent Mr. O'Connell fighting the cause of the Communists; is that right?

A. I did, yes.

Q. And so you take the position that being an elected Congressman of the Democratic Party is also fighting the cause of Communists?

MR. MATTHEWS: I object, your Honor, please. That is a non sequitur. That question is not only improper but it is incompetent.

MR. ERNST: I previously, your Honor, asked whether he knew that he was a Democratic Congressman; he said yes.

THE COURT: Had you any evidence, Commissioner —you can object to this question—I am going to ask the question so either side can object to it. Had you any evidence before you, Commissioner, that Congressman O'Connell was fighting the cause of the Communists?

THE WITNESS: Well, from articles I have read, I don't remember now when, that anything radical, that Mr. O'Connell was interested in.

Q. I will take that. Now, you did testify that at the time of the Civil Liberties Union application and the CIO applications you did not investigation Mr. O'Connell, is that right?

A. If I said that it must be in my testimony; I can't recall just what I did say.

Q. Where did you get the information that Mr. O'Connell was over in Spain?

A. The papers carried it.

Q. Did you check it up with Mr. O'Connell?

A. I did not, no.

Q. You believed what you saw in the papers?

MR. MATTHEWS: I believe, if your Honor please, that is not a fair question to this man whether he believed it or whether he checked it up.

MR. ERNST: I withdraw the question.

MR. MATTHEWS: I think the public press is entitled prima facie to belief.

Q. You believed it sufficiently to incorporate it in a letter including reasons for the rejection of a permit?

A. That's right, I did.

Q. And you did not investigate with any organization connected with Spain?

A. I did not; no, sir.

Q. Did you happen to investigate Jerry O'Connell through newspaper clippings and newspaper reports which were unfriendly to you and Frank Hague or is it only the papers that supported you?

A. Well, I think that I have read it in different papers, whether they are friendly—I don't know what you mean, friendly. Do you mean—if you will state any paper to me that is unfriendly——

Q. I will state a paper. You testified that you do not read the *Evening Post*.

A. I did.

Q. Are there other newspapers that you don't read?

A. Well, I told you what I generally read.

MR. ERNST: May I look at this which was referred to?

MR. MATTHEWS: Oh, no.

THE WITNESS: That is not in evidence.

MR. ERNST: Your Honor please, I subpœnaed it and offer it in evidence, for identification—just a moment, let me finish, I will not steal it from you; I just want to hold it so as to identify.

MR. MATTHEWS: I don't know, sir, whether I want to trust you to take it.

MR. ERNST: Just hold it in the presence of the Judge, sir? If you will just be polite a moment.

MR. MATTHEWS: Don't tell me manners, Ernst.

MR. ERNST: If your Honor please, the statement was made either by the witness or the counsel testifying for the witness that the clippings marked for identification were taken from an envelope; the witness identified the envelope as being one of a series of envelopes. The witness, as I recall it, testified that each month he kept clippings in an envelope.

THE COURT: Maybe I can clear it up. Do you keep clippings of all newspapers, Commissioner?

THE WITNESS: The papers that I get in the office, yes, I get the *Times*, I get the *Jersey Journal*, the *Observer*.

MR. MATTHEWS: *Newark News?*

THE WITNESS: Once in a while the *Newark News;* the *Herald Tribune*.

THE COURT: So that those clippings would be clippings from those newspapers?

THE WITNESS: They are all clippings from those newspapers.

By MR. ERNST:

Q. And these are clippings for one month?

A. Clippings for the month of December, 1937.

MR. ERNST: Now, I ask, your Honor, to have an opportunity to look through these clippings.

MR. MATTHEWS: When he subpœnaes those clippings with the proper subpœna so that I can bind them in the record he is welcome to them all and they will drown him. You are welcome to them and they will drown you.

MR. ERNST: I want to examine the witness further in regard to the envelope, your Honor please. May I have it?

MR. MATTHEWS: Oh, the envelope.

MR. ERNST: That's right. Be a good boy, we will get along.

MR. MATTHEWS: You are acting the boy, I am trying to act the man. Go ahead.

Q. Let me ask you: In here there are clippings from the *New York Times.*

A. There is, yes.

Q. Are there editorial clippings from the *Times?*

A. I think there is.

Q. Did you ever read an editorial in the *New York Times* about Frank Hague?

MR. MATTHEWS: Object, immaterial. This is a question of Jerry O'Connell.

THE COURT: Yes, I think you must confine it to Congressman O'Connell.

Q. There are clippings in here that refer to other than Jerry O'Connell?

A. I will have to look them over to find out.

Q. Will you look them over and if you find a clipping that does not refer to Jerry O'Connell we will go on; otherwise we will sit here.

MR. MATTHEWS: Well, if your Honor please, so this New Yorker has assumed your bench. I think that he isn't going to say whether we will go on or whether we will sit here.

MR. ERNST: Your Honor——

MR. MATTHEWS: I object to the use of this envelope, if your Honor pleases, in that fashion. I am willing to offer it all in evidence for you; and again I

repeat I am a Greek bearing gifts to you, sir, when I offer it.

MR. ERNST: If your Honor please, if I have acted unduly in your court, I apologize to you, sir. I don't think that I have, and I think there is no warrant for a statement that reflects both on you and me; and if my behavior has offended you, I apologize to you, sir.

THE COURT: I think I can manage my own court alone; I hope so.

MR. MATTHEWS: Well, it is nice to see him apologize to you.

Now, do you want to accept them into evidence, with the permission of the Court, may I ask you?

MR. ERNST: I have asked the witness a question: Did you find a clipping?

MR. MATTHEWS: He didn't even look at them. I took them away.

By MR. ERNST:

Q. Will you look at the clippings and see if there is any clipping there that doesn't refer to O'Connell?

MR. MATTHEWS: I object as incompetent, immaterial and irrelevant.

THE COURT: Any, he said; any.

MR. MATTHEWS: What?

MR. ERNST: Counsel himself said that this is an O'Connell matter, when I asked it the other way around. Now when I say, is there a clipping here that doesn't refer to O'Connell he objects the other way. What are you afraid of? Let him answer the question.

MR. MATTHEWS: I am afraid of nothing, and particularly not of you.

Q. Is there a clipping there that doesn't relate to O'Connell, Commissioner? Let's you and I get along.

THE COURT: Just look and see, Commissioner.

A. O. K.

Q. Just is there one clipping that does not relate to O'Connell?

A. There is some clippings here that don't relate to O'Connell, yes.

Q. There are? All right. Now I ask you, Mr. Commissioner, did you read the clippings that are in this envelope?

A. I did.

Q. You did. Did you ever read an editorial from the *New York Times* with respect to Hague, Frank Hague, on civil liberties in New Jersey, or the issues of this trial?

MR. MATTHEWS: I object, if your Honor please, as incompetent and immaterial.

Q. Did you ever read a clipping?

THE COURT: I don't see how that is material.

MR. ERNST: If your Honor please, he has testified on direct that he did not read the *New York Times* editorials or the *Tribune* editorials, and he testified further that if he had read them they would have no effect on him.

MR. MATTHEWS: I have no recollection of that testimony, sir.

MR. ERNST: Well, you were not here, that is one of your embarrassments.

MR. MATTHEWS: Just a minute. I am not embarrassed at all.

He should be confronted with the testimony. That is the rule of law.

MR. ERNST: I shall take care of that in due time, if necessary.

MR. MATTHEWS: Well now at this question, I ask that he be confronted with the testimony that he so testified.

MR. ERNST: Will you answer my question?

MR. MATTHEWS: I object to the question, I have an objection pending before the Court. I object and ask that he be confronted with the testimony that he did not read the *New York Times*.

MR. ERNST: I would like to have the witness answer my question.

THE COURT: Will you read the question, please?

(Pending question read by the reporter.)

THE COURT: Leave out "the issues of this trial." You may answer the rest of the question.

MR. MATTHEWS: I object to that and ask for an exception.

THE COURT: You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Because an editorial about Frank Hague in the *New York Times* is neither competent nor relevant nor material to this issue.

THE COURT: I thought we were talking about Mr. O'Connell.

MR. MATTHEWS: No, Hague.

MR. ERNST: If your Honor please, the witness made up his mind as to granting or denial of permits on the basis of newspaper clippings.

THE WITNESS: If I remember——

MR. ERNST: It is highly pertinent, therefore.

THE WITNESS: If I remember correctly, I did state that I did read the *New York Times*, the *Jersey Jour-*

nal, the *Dispatch*, the *Observer*, and the *Herald Tribune*. You asked, I think, if I remember correctly—when you asked me the different papers, you asked me the *Post*, and I said yes, and then I said—I didn't get the *Post* when you gave me the question, and I said, no, that I don't read the *Post*.

MR. MATTHEWS: I object to the examination of this exhibit which is not in evidence, if your Honor please.

THE COURT: I thought you offered it.

MR. MATTHEWS: Well, he has not accepted it.

THE COURT: Oh.

MR. MATTHEWS: I want him to accept it, and am not bound by it. It is his witness.

THE COURT: Are you going to offer it?

MR. ERNST: No, I am not going to introduce this garbage until I look and see what is in it.

MR. MATTHEWS: Ah, ah, garbage for you, my boy, but dynamite for me.

MR. ERNST: I have an admission there that there is nothing there from the *Post*, to start with.

MR. MATTHEWS: Gentlemen of the press, that is your garbage.

MR. ERNST: That's right.

MR. MATTHEWS: Your garbage.

THE COURT: I thought you were not currying favor.

MR. MATTHEWS: That is not currying favor. That is just telling them; and again I tell them I don't curry their favor. They appreciate real guys.

Q. Will the witness continue to answer the question, please?

A. If I remember the question——

MR. MATTHEWS: The question was objected to.

MR. ERNST: You took an exception.

MR. MATTHEWS: No, but his Honor thought it referred to O'Connell. It refers to Hague.

THE COURT: It seems to me, Mr. Ernst, that this witness said that he made up his mind with respect to what the newspapers said about the popular sentiment, is that correct, not what they said editorially. There was no assertion that editorial writers were going to appear at the meetings.

MR. ERNST: I would like to know the witness's position on that. That will satisfy me.

THE WITNESS: Well, it is practically just like Judge Clark stated. I told you that I read the papers.

Q. You didn't read all the papers?
A. I didn't——
Q. You didn't read unfriendly papers, did you?

MR. MATTHEWS: Well, he said he didn't know what unfriendly papers were.

A. I asked you what unfriendly papers were. I told you the papers I read, if you class them as unfriendly. I don't class papers as unfriendly to me.
Q. Why didn't you read the *Evening Post?*
A. Because I didn't want to.

MR. MATTHEWS: Objected to. Perhaps for the reason that many people don't read it.

Q. When did you decide not to read the *Post?*

MR. MATTHEWS: If the *Post* man is here, that can't be currying his favor.

Q. When did you decide not to read the *Post?*

A. That question, your Honor, I think is ridiculous.

MR. MATTHEWS: Yes.

A. (Continuing.) I have got a perfect right to read what I feel like.

Q. Do you know what the name f Journal Square was previously?

MR. MATTHEWS: Objected to as immaterial.

THE COURT: The implication is it was named after the newspapers, I suppose?

MR. ERNST: No, no.

THE COURT: I don't see its relevance to this issue.

MR. ERNST: Just the name.

Q. What was the name previously?

MR. MATTHEWS: I object as immaterial. Just a minute, please, until the objection is ruled on, so that I may make my own record.

THE COURT: I will sustain it.

MR. MATTHEWS: I object as immaterial.

THE COURT: I have sustained it.

MR. MATTHEWS: Thank you.

Q. You didn't investigate through any organization or through the Congressmen themselves in respect to a trip to Spain, did you?

A. I did not, no, sir. I told you that a half a dozen times now, I think.

Q. Did you write the letter in which that reference is contained?

A. No, I didn't write it. It was typed.

Q. Did you dictate it?

A. I dictated it with my secretary.

Q. Was there a previous draft of that letter?

A. A previous draft?

Q. Or did you sit right down and dictate that letter?

A. I sat down with the help of my secretary and we dictated it.

Q. Yes. What is the name of the secretary that helped you on it?

MR. MATTHEWS: I object as immaterial to this issue.

THE COURT: I think what Mr. Ernst means is did you consult anybody about the letter.

THE WITNESS: If you will let me see that letter——

Q. Surely (handing to the witness).

A. No, I think my secretary and I got that letter out.

Q. What is the name of your secretary?

A. Walter Daly.

Q. Walter Daly.

THE COURT: It is in the record already.

A. It is in the record.

MR. MATTHEWS: All right, your Honor, on second thought——

Q. Did you make any investigation to support the statement contained in the letter that the Hudson County Committee for Civil Liberties was part of the International Labor Defense, or did you only get that from the newspaper?

A. The newspapers, I think.

Q. And you did not inquire——

A. I did not inquire, no, but from the hook-up, the general hook-up, one representing the other, I come to the conclusion—to that conclusion, rather.

Q. That's right. And the hook-up idea you got from newspapers?

A. The hook-up, yes.

Q. And you didn't have any one of your men get in touch with the Hudson County Committee or the ILD to find out whether that hook-up was as indicated in the Jersey *Journal*?

A. I did not, and I stated my reasons for it.

Q. That's all right.

A. Because—if you want them, I will give them to you.

Q. All right. Now in regard to the application from Morris Ernst, did you check up in any way on that?

A. I did not.

Q. You did not?

A. No.

Q. Did you know at the time that he was a member of the Banking Commission of the State of New York by appointment——

MR. MATTHEWS: I object to that.

MR. ERNST: Just let me finish the question.

Q. (Continuing.) By appointment of Governor Roosevelt and Governor Lehman?

MR. MATTHEWS: I object, if your Honor please. This is not competent direct examination or re-direct examination.

THE COURT: It is on the issue as to investigation. I will allow the question.

MR. MATTHEWS: Your Honor will allow me an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. I did not.

Q. Did you read in the newspapers of the period in controversy here that Mr. Ernst was denied a permit for admission directly because he was against dictatorships and in favor of civil liberties?

MR. MATTHEWS: I object if your Honor pleases.

MR. ERNST: I just want to know if you read it.

THE COURT: You may answer.

MR. MATTHEWS: Exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. No, I did not.

Q. Have you learned about it since the date of the application and up to the date of trial, did you ever hear of those facts?

MR. MATTHEWS: If your Honor please, how could he hear that? Why, nobody had ever heard that before. I think Ernst is telling us for the first time.

A. I wouldn't say that I have, counselor. I might have heard it.

Q. Yes.

A. My gosh, you hear a lot of stuff.

Q. That is right.

A. And you don't remember everything you hear. You are a wonder if you can do it.

Q. And you don't believe everything you hear either, do you?

A. No.

Q. And you don't believe everything you read either, do you?

A. Well, you gave me a statement yesterday from some paper here, and I know it was a darned lie, for I never interviewed the man, or he never interviewed me.

Q. And so in making up your mind in regard to permits, when you read some material in the newspapers, you didn't investigate that, the report in the newspapers, is that it?

A. I didn't investigate it, no. I took it on its face value.

Q. Now those cases referred to of some men who were picked up on February 6th, do you know if they have been brought to trial?

A. I couldn't tell you, counselor.

Q. Would you in the ordinary course of your position know if they had been brought to trial?

A. No, I wouldn't.

Q. Would you know if they had been acquitted on the charge for which they were picked up?

A. I would not.

Q. You wouldn't even know that.

A. I will explain to you, if you want me, why I brought that case out.

Q. No.

A. You were talking about cars being stopped.

Q. That's right. I understand.

A. With CIO workers, and I want to just prove why it was done.

Q. There is no evidence that they were CIO—you didn't see the car, did you?

A. No, I didn't.

Q. And there is nothing on those cards to show that they were CIO workers, is there?

A. Only what the men admitted and the papers carried.

Q. The papers. Now some A. F. of L. workers have also been picked up on suspicion at times, haven't they?

A. There is no doubt about that.

Q. No question about it. And a lot of people have been picked up on suspicion in Jersey City who were members of no union?

A. That is right.

Q. That's right. And so you do not mean to imply that there is any special meaning in the fact that these men who were picked up may or may not have been members of the CIO?

MR. MATTHEWS: I object, if your Honor please.

A. Well, that's what I am trying to prove——

MR. MATTHEWS: It has been proved that they had a gun with them in violation of law.

MR. ERNST: No, no, they didn't have a gun in violation of law.

MR. MATTHEWS: Yes.

MR. ERNST: There was a charge made against them that they had a gun in violation of law, and it may well have been planted; and you haven't proved here that it hasn't been.

MR. MATTHEWS: Mr. Ernst is planting everything but the truth in this case.

Q. Will you, Commissioner, find out if the case has been brought to trial since February? Can you find out right now?

A. That is up to the prosecutor of the county.

MR. ERNST: Does Mr. Hamill or Mr. O'Mara know about that?

MR. MATTHEWS: You can subpœna the records and do it in the orderly fashion. I object, if your Honor pleases.

MR. ERNST: All right. Let the record lie as it is.

MR. MATTHEWS: No, not the record lie; let the record stay.

A. I want to prove to you, Mr. Ernst——

Q. What?

A. —that we play no favorites in stopping cars.

Q. That is right. That's what I meant; that this was no proof against CIO, just that you stop all cars on suspicion?

A. But you brought the CIO car into it.

MR. MATTHEWS: That's for the C rt to decide. I object. Just a minute, Mr. Casey. That's for the Court to decide.

THE COURT: Yes.

Q. Now, may I ask one further question on which I would like to clarify the record on direct, and I think that the Commissioner would like to have the record clarified; if his counsel objects, I will withdraw the question, because it is not proper re-direct.

As I recall your testimony of yesterday in regard to picketing, the record is somewhat confusing as to whether you allow people from outside of the State of New Jersey, people who live outside of the state, to picket in Jersey City.

A. They have been doing it, right along here.

Q. And one other point I would like clarification on: Do you or do you not allow non-workers in a particular plant to picket a particular plant?

A. We don't allow non-workers, no.

Q. And one other point that I think may need clarification. When you say "picket," you mean walking up and down in front of the plant?

A. That's it.

Q. And do you allow people to picket in front of a plant, or do you require that they picket a plant by walking up and down a block or two blocks away?

A. I allow them to walk in front of the plant.

Q. Right in front of the plant?

A. Up and down in front of that plant.

Q. And if your police at times have insisted that the workers must walk up and down in a block or two blocks removed, instead of in front of a plant, that is not consistent with your orders?

A. No, I don't keep them away if the plant is on strike; they got a perfect right to picket it; I don't stop them.

Q. Commissioner, in your clipping files somewhere, not offered in evidence by the counsel for Jersey City, did you find statements issued to the press by me denying the report in the *Jersey Journal* that in any way I was urging the use of machine guns? Did you find any statement of denial on my part?

A. No, I didn't say you were urging the use of them.

Q. You didn't?

A. I didn't say that.

Q. Did you see any clippings indicating that I was fearful that Mayor Hague would next use machine guns? Just did you see the clippings?

A. No, I——

MR. MATTHEWS: If your Honor please, I read a clipping to him in which Mr. Ernst explained in two different ways his speech at Washington.

MR. ERNST: No, no.

MR. MATTHEWS: One of which was that Mayor Hague might resort to machine guns.

MR. ERNST: There is no such evidence at all, nothing that I explained. He introduced two clippings which purported to quote me as explaining it two different ways. Now both of the reporters couldn't have been right.

MR. MATTHEWS: And one of them must have been, and either one, it seems, condemns the statement.

A. What was that question?

Q. The question was, did you in your mass of clippings or do you now recall in your mass of clippings if you found statements indicating that I was fearful that if Frank Hague continued his processes he would next bring machine guns on the streets? Don't you remember statements like that on my part, quoted in the newspapers?

A. Well, to tell you offhand, I have read statements to that effect, but I couldn't tell you just what the direct wording is.

Q. No, to that effect.

MR. ERNST: That is all, your Honor.

RE-CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Just a minute before you leave the stand. I show you a picture with the caption "Congressman Jerry O'Connell with Communist Herbert Benjamin and Socialist David Lasser conferring on possible action against Mayor Hague of New Jersey."

Did you hand me that yesterday?

A. I did.

THE COURT: What is that magazine?

MR. MATTHEWS: That is from the National Republic, "A Magazine of Fundamental Americanism" is the caption of it. The baldheaded one is Jerry.

MR. ERNST: May I just ask that the date of the issue be indicated, June, 1938.

MR. MATTHEWS: May I have it marked for identification? The case is being tried today.

(Marked Exhibit D-9 for identification.)

MR. MATTHEWS: I am finished.

MR. ERNST: If your Honor please, there is another question that we can save time, instead of calling another witness, which Mr. Casey may be able to answer. We may be able to avoid calling the chief of police and if counsel objects we will have to call the chief of police.

I ask Mr. Casey if he has seen the *Newark Ledger* of Wednesday, June 8, 1938, with particular reference to an item called "CIO Invasion; Hague's Kin Tells Story."

MR. MATTHEWS: I object to that as absolutely incompetent in this issue.

MR. ERNST: Just whether he saw it.

THE WITNESS: Do you mind if I read it?

MR. MATTHEWS: No, no, you don't need to read it. Did you see it?

MR. ERNST: He may want to read it to see if he saw it.

THE WITNESS: I did not see the *Ledger*. I very seldom see the *Ledger*.

MR. MATTHEWS: Very seldom reads the *Ledger*, he says.

Q. Do you recall seeing a statement printed Wednesday in various papers quoting Frank H. Eggers?

MR. MATTHEWS: I object to that, an attempt to write into this record what is in the *Newark Ledger*. I ask it be proved properly. He says he didn't see the paper. I object.

THE COURT: Sustained.

Q. Do you know of a threat made by Frank H. Eggers?

MR. MATTHEWS: I object, if your Honor please, to any statement of this kind.

Q. (Continuing.) To CIO organizers and workers?

MR. MATTHEWS: I object.

A. No, I don't.

MR. ERNST: He can answer if he knows of a threat.

THE COURT: He says he didn't know.

Q. You don't know about it?
A. I don't know about it.
Q. All right, that's all.

MR. MATTHEWS: That's all. Thank you, Mr. Casey.

MARY PADLA, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Where are you employed?

A. Restful Footwear.

Q. Whereabouts is that?

A. Wilkinson Avenue.

Q. Is that a union shop?

A. Yes.

Q. And how much are you receiving by way of compensation there?

MR. MATTHEWS: I object as immaterial to this issue. I object. It is immaterial what this girl gets.

THE COURT: Where does she work?

MR. MATTHEWS: Restful Footwear Company in Jersey City.

THE COURT: What is the ground of the objection?

MR. MATTHEWS: The ground is it is immaterial to this issue.

THE COURT: I heard you.

MR. MATTHEWS: I am sorry. I thought you asked me what the ground is.

THE COURT: I did. I understood one of the issues was in regard to what are called the organizational activities of labor that took place in Jersey City. That is one of the issues.

MR. MATTHEWS: I don't take it so. I read the bill very carefully last night, having in mind even whether there might be equitable relief granted, and as I read it I find that these different organizations have summoned the Civil Liberties Union to protect them in the right of free speech.

THE COURT: That isn't the sole issue, there are several issues. One of the issues is organizational activities on the part of the labor unions, nothing to do with Civil Liberties Union.

MR. MATTHEWS: Well, of course, the Civil Liberties Union is the one that comes along to help them. I think it is immaterial to the issue. I want my objection on the record.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. How much do you receive?
A. $14 a week.
Q. For how many hours' work?
A. Eight hours' work.
Q. Before you were employed by the Restful Footwear where were you employed?
A. Inter-Allied.

THE COURT: What is that?

THE WITNESS: It is the Inter-Allied Slipper place.

THE COURT: Whereabouts?

THE WITNESS: Harborside Building.

Q. Was that a union shop?
A. No.
Q. How much did you receive when you were employed by the Inter-Allied?
A. Well, I started with $8.
Q. And for how many hours a week was that?
A. Eight hours a week.
Q. How old are you?
A. Nineteen.
Q. How long have you been working, or how long have you been with the Restful Footwear?

A. A year.

Q. How long were you with the Inter-Allied before that?

A. A year and a half.

Q. I think you said eight hours a week; you mean a day?

A. Eight hours a week.

THE COURT: No, she means eight hours a day.

Q. How many days do you work there?

A. Five days.

Q. Off on Saturdays?

A. In the Restful Footwear.

Q. Yes. When you were with the Inter-Allied what were your hours?

A. My hours were from 8 to 7, sometimes till 8 o'clock at night.

MR. MATTHEWS: No questions.

THE COURT: May I ask what is the nature of your work, what do you do?

THE WITNESS: Packer.

THE COURT: Pack the slippers?

THE WITNESS: Pack the slippers.

THE COURT: What is the name of your employer, do you remember?

THE WITNESS: Down at Inter-Allied?

THE COURT: Where you are working now, which is the Restful Footwear. What is the name of your employer?

THE WITNESS: I don't remember.

THE COURT: You don't remember. Do you remember the name of anybody in the place, I mean any foreman or something?

THE WITNESS: No, I don't remember.

By MR. FRAZER:

Q. What was the name of the boss, do you know?

A. No, I don't remember.

Q. How many girls were there working in that shop of the Inter-Allied Slipper Company?

A. I couldn't tell you.

Q. You don't know approximately how many were there?

A. No.

Q. That is all.

MR. MATTHEWS: That is all, no questions.

JEAN PALMIERI, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Where do you work, Jean?

A. I work in the Norwalk Slipper Company.

Q. In Jersey City?

A. Yes.

Q. Is that a union shop?

A. Yes.

Q. What union?

A. CIO.

MR. MATTHEWS: What is it?

THE WITNESS: CIO.

Q. How long have you been working there?

A. About a year.

Q. And before you worked there where did you work?

A. I worked in the Uneeda and Inter-Allied Slipper Company.

Q. And what are your wages now where you are working?

A. $12.50 a week.

Q. When you were working with the——

MR. MATTHEWS: Pardon me, did I now understand that she is getting as a CIO worker——

MR. FRAZER: $12.50.

Q. What are your hours now?

A. From 8 to 5.

Q. And when you were working for the Uneeda Slipper Company what were your wages?

A. Uneeda, I got $8 a week there, 20 cents an hour.

Q. What were your actual hours?

A. From 8 to 5, on Saturdays from 8 to 12, forty-four hours a week.

Q. Did you ever work at any time beyond those hours?

A. Yes.

Q. What time did the shop close up, the Uneeda?

A. The Uneeda closed up about 3 o'clock on Saturdays; that is about the latest I worked.

Q. What about the other days of the week?

A. Sundays.

Q. Do they work Sundays?

A. Yes—I didn't work on Sundays.

Q. You didn't work on Sundays, but they did run the shop on Sundays?

A. Yes.

Q. Did the fact that you didn't work on Sunday have any effect upon your employment there?

A. Certainly, I was fired.

Q. You were fired for not working?

A. That is, in the Inter-Allied.

Q. What about the other place?

A. I worked fifty, fifty-five hours a week, 7 and 8 o'clock at night.

THE COURT: Dean Frazer, let's get these various shops more definite; I am a little confused about it.

MR. MATTHEWS: You may want it for your own self. I am not interested even. I have no objection.

THE COURT: I think it should show. You first worked where?

THE WITNESS: First, Inter-Allied.

THE COURT: And is that where you were asked to work on Sunday and were fired?

THE WITNESS: Yes, that's the one.

THE COURT: I see. Are they still in business?

THE WITNESS: Sure.

THE COURT: Who was the boss there?

THE WITNESS: Mr. Goldman.

THE COURT: Do you remember his first name?

THE WITNESS: Al,-I am not sure, though.

THE COURT: And then you went from there to the Uneeda, is that right?

THE WITNESS: Yes.

THE COURT: And the same wages?

THE WITNESS: Yes, 20 cents an hour.

THE COURT: And then from there you went to——

THE WITNESS: To the Norwalk.

THE COURT: Where you are now employed?

THE WITNESS: Yes.

By MR. FRAZER:

Q. Both the Uneeda and the Inter-Allied were non-union shops, is that right?

A. Yes.

Q. That is all.

MR. MATTHEWS: No questions.

LILA ROCCO, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Where do you work?

A. Louis Bender.

Q. Where is that?

A. Harborside Building.

Q. Is that a union shop?

A. Yes.

Q. And what is the business, what do they make there?

A. Pyjamas.

Q. How long has that been a union shop?

A. Well, it isn't quite a year.

Q. And did you work there before it became union?

A. Yes.

Q. What did you receive before it was a union shop for a forty-hour week?

A. $9; forty-four hours a week.

Q. For forty-four hours; and what do you receive now?

A. $14.

Q. For how many hours?

A. Forty.

THE COURT: Did she say what union?

Q. What union is it?

A. The A. F. of L.

Q. Is that the International Ladies Garment Workers?

A. Yes, sir.

Q. Now, did you ever work in any other shops in Jersey City before?

A. Yes, La Paree in the Harborside Building.

Q. And what do they do?

A. They do undergarments.

Q. What did you get there, what are yours there?

A. The hours were from 8:30 in the morning till 6 at night.

Q. Any overtime at times?

A. Well, he usually had girls working on Saturdays for him?

Q. Until how late?

THE COURT: What is the name of this one?

MR. FRAZER: La Paree.

Q. That is spelled L-a P-a-r-e-e, I think.

A. Yes.

THE COURT: What do they make?

THE WITNESS: Undergarments.

THE COURT: Also. No, the others made pyjamas, is that right?

THE WITNESS: Yes.

MR. FRAZER: Cross-examine.

MR. MATTHEWS: No questions.

THE COURT: Did she give her wages at La Paree?

MR. FRAZER: Pardon me?

THE COURT: Did she give her wages there?

MR. FRAZER: I don't know that she did.

MR. MATTHEWS: What did you get at La Paree?

THE WITNESS: Well, it was piece work there.

THE COURT: What did you average there?

THE WITNESS: $12 or $13.

By MR. FRAZER:

Q. You are not on piece work any more?

A. No.

GRACE PECORE, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Now, Grace, where do you work?

A. I am not working at the present time.

Q. You are not working. Where was the last place you worked?

A. Sam Seham.

THE COURT: What is his address?

THE WITNESS: 31 Wilkinson Avenue.

Q. 31 Wilkinson Avenue. That is Jersey City?

A. Jersey City.

Q. And they are out of business now, is that it?

A. That's right.

Q. Was that a union shop?

A. No, it wasn't.

Q. And how much did you get there, Grace?

A. Well, I was making $16 until they cut us; the last time I was making $14.

Q. Was there any effort made to unionize that shop?

A. Yes, there was.

Q. And when you first went there how long ago was that?

A. When I first went there?

Q. Yes.

A. When I first started working?

Q. Yes.

A. Five years ago.

Q. And how much did you get then when you first went there before they started any union activity?

A. $6 a week.

Q. For how many hours?

A. Forty hours.

THE COURT: Who made the effort, Dean Frazer?

MR. FRAZER: To unionize?

Q. Who did make the effort to unionize?

A. The fellows that work there first started it.

Q. And were you approached on the unionization?

A. Yes, I was.

Q. Did the boss learn anything about your relations to the union?

MR. MATTHEWS: I object, that is not competent. What union was it?

THE WITNESS: A. F. L.

Q. That is the International Ladies Garments Union?

MR. MATTHEWS: American Federation of Labor, the A. F. L.

MR. FRAZER: But I wanted specifically the local union. American Federation of Labor is a generic term.

MR. MATTHEWS: Oh, indeed, I well know it.

Q. Did your boss ever speak to you in relation to the union activities there?

A. Yes.

Q. Did you work Saturday mornings ordinarily?

A. Sometimes when we were busy.

Q. Did he request you to come down Saturday morning to meet any member of the Jersey City police force?

A. Yes, he did.

Q. And who was that?

A. That was Captain Drewen of the Jersey City police.

Q. And did you meet Captain Drewen?

A. I did.

Q. And what was the subject of your conversation with Captain Drewen?

MR. MATTHEWS: I object, if your Honor please.

THE COURT: Unless it relates to this issue of unionization.

MR. FRAZER: Well, it does relate to the issue of unionization.

Q. Did it relate to unionization?

A. Yes.

MR. MATTHEWS: Just a minute, your Honor please. You cannot lug testimony in this way. This is not only not fair but it is not legal or competent. That is not the way to prove this allegation. This girl is not working.

THE COURT: What is that last?

MR. MATTHEWS: This girl is not working.

THE COURT: No, not now. You may answer.

MR. MATTHEWS: I object to the proof as incompetent.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. What is that question?

Q. Was it in relation to union activity that Captain Drewen spoke to you?

A. Yes, it was.

Q. And what did he want to know from you?

MR. MATTHEWS: I object, if your Honor please, as hearsay.

THE COURT: I think that is hearsay.

MR. FRAZER: Very well. May I have an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Who brought you here today?

A. Mr. Frazer.

Q. Mr. Frazer. When did you first meet Mr. Frazer?

A. The first time I met him was when I signed the affidavit.

Q. When was that?

A. I don't remember the date.

Q. Who brought you to his office?

A. The organizer.

Q. What organizer, what is his name?

A. Jerry.

Q. Not Jerry O'Connell?

A. No, not Jerry O'Connell.

Q. No. Jerry who, is Jerry in Court, do you see him?

A. No, he is not here.

Q. Who else besides Jerry?

A. Josie: I don't know her last name.

MR. MATTHEWS: Is Josie in court?

MR. FRAZER: Yes, Josie del Veccio.

MR. MATTHEWS: Will Josie del Veccio stand up, please?

Q. Is that the girl?

A. Yes.

Q. And when did Josie and Jerry bring you to Mr. Frazer's office to make the affidavit?

A. I don't remember the date; that is quite a while ago now.

Q. How long have you known Jerry?

A. About a year, I would say.

Q. And where did you meet Jerry?

MR. FRAZER: I object, not proper cross-examination when she met Jerry.

MR. MATTHEWS: I have a right to test the credibility of this witness.

A. I first met Jerry in the union office in Bayonne.

Q. In the union office in Bayonne. And when was that that you met Jerry in the union office in Bayonne?

MR. FRAZER: I object, wholly immaterial to this examination.

THE COURT: I think it is.

MR. MATTHEWS: Why, this is cross-examination. If they are going to trot on a lot of youngsters on this stand to make statements and don't allow us to press into the origin of their testimony, that is denying these defendants, who are municipal authorities in the second largest city in this state, their rights, and the essence of this cause seems to be rights for the public; why not rights for the public officials?

THE COURT: Go ahead.

(Question repeated by the reporter.)

A. I don't remember when I met him.

Q. Well, how did you come to meet Jerry, did he go looking for you or did you go looking for him?

A. No, he didn't look for me.

THE COURT: I want to protect her, Mr. Matthews. She is a young girl. She told us that this organizer, who I suppose will be called, took her there, is that right?

THE WITNESS: A clerk in the office took me up to the office, that he wanted to see me and talk to me.

Q. Were you home then or working?

A. I was working then.

Q. How long are you not working?

A. Five weeks.

Q. How long is it since the shop folded up?
A. Five weeks.
A. That is all.

THE COURT: Ten minute recess.

(Recess.)

(Following a short recess.)

THE COURT: Go ahead, Dean Frazer.

MR. FRAZER: Miss Opitz.

DOROTHY OPITZ, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Miss Opitz, where are you employed?
A. William J. Egan's office.
Q. Where is that?
A. 1132 Raymond Boulevard.
Q. Newark?
A. Newark.
Q. And that is a law office?
A. It is.
Q. And were you so employed on Saturday, the 4th of June?
A. I was.
Q. Of this year?
A. Yes, sir.
Q. What time did you get to the office that morning?

MR. MATTHEWS: I object, if your Honor please. This is entirely irrelevant to this issue.

THE COURT: Well, I don't know anything about it yet.

MR. MATTHEWS: Well, I think the purpose of the testimony ought to be stated to the Court before the

record is encumbered with something that may not have relevance to this issue.

THE COURT: Well, certainly what time she got to the office cannot hurt anybody.

MR. MATTHEWS: Well, that is true.

MR. FRAZER: I am perfectly willing to state the purpose if the Court wishes me to.

THE COURT: Mr. Matthews seems to want you to.

MR. MATTHEWS: Only if the purpose is relevant to this issue, your Honor.

THE COURT: In the meantime, let her say what time she got to the office. That will probably be in her favor.

A. About nine o'clock.
Q. And Mr. Egan was there or not, at the time?
A. He was not there.
Q. He didn't get in until later?
A. That is right.
Q. About twelve o'clock?
A. Approximately.
Q. When he came in did he come in in company with others?

MR. MATTHEWS: I object as immaterial to this issue.

THE COURT: Well, I am in the dark about it, Mr. Matthews.

MR. MATTHEWS: I wouldn't be, though, if your Honor pleases. I don't think we ought to be in the dark.

THE COURT: I say I am now.

MR. MATTHEWS: Yes, so are we all. Well, not altogether in the dark, but at the same time I think your Honor ought to insist that this matter be relevant to the issue.

Q. When he did come in, did he come in in the company of other people?

MR. MATTHEWS: I object, if your Honor please, that this question is irrelevant. I would like a ruling on it, please.

THE COURT: Will you state the purpose of the testimony?

MR. FRAZER: Yes, sir.

MR. MATTHEWS: Now Mr. Ernst has just said to Mr. Frazer: "Go to it, spill it." Now, if your Honor pleases, that is no remark from counsel, and there should be no "going to it" and "spilling it" about anything that is irrelevant to this issue.

THE COURT: I didn't hear it.

MR. MATTHEWS: I know you didn't, your Honor. I have assisted you in hearing it.

MR. ERNST: If your Honor please——

MR. FRAZER: It seems to me that counsel might be better engaged at his own table and not overhearing remarks facetious or otherwise between counsel at my table.

MR. MATTHEWS: If that is a facetious remark, if your Honor pleases, I will allow your Honor to say whether it is or not, in this court, a dignified United States District Court for New Jersey, "spill it," "go to it."

MR. FRAZER: Do you wish——

MR. MATTHEWS: If that is the way this case is in their minds, if your Honor pleases, it isn't in mine. I am taking my position seriously in this matter, and I want to object that this question, this testimony, is irrelevant to the issue.

MR. FRAZER: Well I understand that Sir John has called upon me for a statement of my position in the matter.

MR. MATTHEWS: No, I have not. The Court said state the reason for your question.

MR. FRAZER: The purpose of these witnesses, and there are a number of them, is to continue the proof of conspiracy on the part of the Jersey City authorities, of which we have offered evidence in the matter of the O'Connell meeting, the Thomas appearance, and similar episodes. We believe that there is clear evidence that under direction from the authorities of Jersey City through the instrumentality of Mr. William J. Egan, a member of the bar of New Jersey, whose office is in this city, there was a meeting of persons on Saturday, June 4, 1938, for the purpose of fomenting an attack upon Mr. Thomas——

MR. MATTHEWS: I object now, if your Honor please.

MR. FRAZER: When he——

MR. MATTHEWS: I object. This man Thomas has been running around this part of the country seeking publicity, and now he is using this Court for it, and the allegations made by counsel, if your Honor pleases, are made solely in order to give scenery to this case. What in the world can anything that was done, if it was done, on last Saturday, have to do with the matters in this complaint? That to my mind, sir, shows the true picture in this case. This is an attempt on the part of these fellows to advertise these reactionaries, and this Court ought not to be allowed to be used for that purpose, Judge Clark; I say it respecting you deeply, and this court.

MR. FRAZER: If counsel——

MR. MATTHEWS: Such truck as that to be brought in, that there was a meeting on the seventh or eighth

of June! There is nothing alleged in that complaint that warrants that testimony, nothing whatsoever, under the law of man.

MR. FRAZER: I might call the Court's attention to the fact that Mr. Matthews himself recently offered as evidence in the case a magazine published in June, 1938.

MR. MATTHEWS: And to my surprise you did not object to it. Now I object to it. I offered that magazine, however, as cross-examination of a witness produced by them of whom they asked, "How did you know that Jerry O'Connell was a Communist?" And I showed them.

MR. FRAZER: Now if counsel has finished his interruption of my statement——

MR. MATTHEWS: It isn't an interruption of your statement. It is an objection.

MR. FRAZER: Of my offer, I will go on to say that I believe that we will be able to submit to this Court by those who attended at Mr. Egan's office——

MR. MATTHEWS: Now I object to this statement, if your Honor pleases.

MR. FRAZER: By the——

MR. MATTHEWS: I object.

MR. FRAZER: By the——

THE COURT: Well, I suppose counsel is entitled to show the purpose—on either side.

MR. FRAZER: By the summoning or the subpœnaing of the records of the telephone company to indicate the communications which took place between the offices, all leading up in the first place to the so-called protest filed, I think, by Mr. Michael Breitkopf and a

group of associates with the chief of police of Newark against the Thomas meeting, and culminating in one of the most disorderly mob attacks upon a person authorized under license of the City of Newark to speak in public at Military Park.

MR. MATTHEWS: Again I say——

MR. FRAZER: I wish to show those facts as part of the conspiracy to prevent free speech in these communities.

MR. MATTHEWS: Again I say——

MR. FRAZER: Through the Jersey City authorities, the defendants.

MR. MATTHEWS: I again say it is irrelevant to this issue and highly improper, and that the statement should be stricken from the record.

MR. FRAZER: We expect to tie it up with the defendants.

MR. MATTHEWS: Oh, if your Honor pleases, that is not an answer to my objection. For your Honor to allow anything like that in this case, with respect, I say it to this Court, would be simply giving an opportunity to many of these people to wash their dirty linen in this august federal court.

MR. FRAZER: I desire to show that the defense says in this case it has been continuously put to the necessity of answering protests. I wish to show now that these protests are largely fomented as part of the conspiracy.

MR. MATTHEWS: If your Honor please, the complaint does not envision, purview or remotely refer nor warrant under the law any such testimony, and I can't say it too seriously on this record.

THE COURT: It would seem to me, Dean Frazer, as I ruled before, that this is a matter of rebuttal rather than of original case. I will sustain the objection.

MR. MATTHEWS: Thank you.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Now, may I have stricken from the record the purpose?

THE COURT: Well, it is not my practice, Mr. Matthews, to strike from the record statements of counsel.

MR. MATTHEWS: Except, if your Honor please, that it reflects upon a member of the bar of this court, whom I am sure you wouldn't want to have reflected on unless there was some evidence brought, and since it is not relevant at this time and might be, as your Honor says, in rebuttal, though I don't know, it does seem to me for his sake that that should be stricken from the record.

MR. FRAZER: I would like once more to urge upon the Court the fact that this is not offered by way of rebuttal but as affirmative proof of conspiracy, which I feel we have a right to put in at this time.

THE COURT: You have your exception.

MR. FRAZER: All right. That is all.

MR. MATTHEWS: No questions. Thank you.

Dr. Webber.

(Witness excused.)

REVEREND CHARLES C. WEBBER, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

THE WITNESS: The "Doctor" is not correct. I do not hold a doctor's degree.

MR. FRAZER: Might I ask for the purposes of the record to have noted that I have subpœnaed certain persons for this purpose?

THE COURT: Certainly.

MR. FRAZER: There is Miss Opitz, Miss Kasen—what is your full name?

MISS KASEN: Jeannette Kasen.

MR. FRAZER: Jeannette Kasen, William Hildebrand, Jr., and Robert L. Hood; and might I ask that any stenographic note books which were brought down at this time in response to the subpœna, be marked as an exhibit for identication?

MR. MATTHEWS: I object, if your Honor pleases. That is casting a reflection—more than that—upon the office of a member of this bar, and there is no right in law to mark for identification anything brought by a witness when the witnesses are not used.

THE COURT: Well, I don't see what the fact that a person is a member of the bar has to do with it.

MR. FRAZER: I am trying to——

MR. MATTHEWS: It may mean nothing to your Honor, I hold no brief for any member of the bar. I try to hold one for myself, and that's difficult.

MR. FRAZER: It seems to me if there is no basis for reflection, there can be no objection to having the books marked for identification.

MR. MATTHEWS: The objection is legal. You can't mark for identification what is not part of the case.

THE COURT: Will you state the reason for that request, Dean Frazer, please?

MR. FRAZER: Because your Honor has ruled, contrary to my offer, that I may not produce the witnesses. I have subpœnaed them duces tecum to produce notes which were taken during the course of the meeting which I had hoped to prove. I want to be assured that if your Honor subsequently holds that this is proper rebuttal, I may have those notes in their integrity without being destroyed, without being altered. I want to know where they are and have them available.

MR. MATTHEWS: There are several rights under the Constitution, and one is to property. I daresay that in protecting free speech your Honor won't infringe upon property rights. That would be an objection too.

THE COURT: Will you ask the witnesses if they have any notes?

MR. FRAZER: Have you any notes with you, either of you ladies?

(The persons addressed both answered in the affirmative.)

MR. FRAZER: They both say that they have.

THE COURT: Ask them what they are about.

MR. MATTHEWS: Oh, if your Honor please——

THE COURT: Not as to their contents.

MR. FRAZER: Would you step down, Dr. Webber, please?

(The witness withdrew.)

MR FRAZER: Might I call Miss Opitz back——

THE COURT: Yes.

MR. FRAZER:—for the purpose of those questions?

MR. MATTHEWS: If your Honor please, I have made an objection to such questions, and your Honor has ruled that the testimony is incompetent.

THE COURT: I am not going to allow it at this time, Mr. Matthews.

DOROTHY OPITZ, recalled.

By MR. FRAZER:

Q. Miss Opitz, on June 4, 1938, did you take any notes in your capacity as secretary——

MR. MATTHEWS: I object, if your Honor please.

Q. (Continuing.)—or stenographer.

THE COURT: You may answer. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.) (Seal)

Q. Did you?

A. I did.

Q. And have you those notes with you?

A. I have.

Q. And what is the general subject matter of the notes?

MR. MATTHEWS: I object, if your Honor pleases, as irrelevant to this issue.

THE COURT: Well, you can't get the evidence, Dean Frazer, that way.

Were those notes taken in your own stenographic symbols?

THE WITNESS: Yes, they were.

THE COURT: Are they long?

THE WITNESS: Well, just a few pages long.

THE COURT: I assume that the young lady will not alter or destroy the notes.

MR. MATTHEWS: Certainly not, your Honor. You will produce them if the Court orders, as they are now, won't you, Miss?

THE WITNESS: Yes.

MR. MATTHEWS: And yourself, too?

THE WITNESS: Yes.

THE COURT: All right.

MR. FRAZER: They may not be marked for identification, sir?

THE COURT: No, I think that would be improper.

MR. FRAZER: May I ask Miss Kasen to testify to the same effect?

THE COURT: Yes, certainly.

MR. MATTHEWS: Can't it be stipulated that she has some notes and that she will produce them if the Court orders her to produce them, as they are, unaltered?

THE COURT: Yes. Are they of the same occasion?

MR. MATTHEWS: Notes made on last Saturday, was it, Miss?

MISS KASEN: Yes.

MR. MATTHEWS: And you will produce them for the Court unaltered as they are now, if you are asked to do so?

MISS KASEN: Yes.

MR. MATTHEWS: All right. Thank you.

THE COURT: And at the same time that the other young lady testifies?

MISS KASEN: Yes.

THE COURT: You were both taking notes, were you?

MISS KASEN: Not at the same moment, the same day.

THE COURT: In succession too?

MISS KASEN: No, they weren't in succession too.

THE COURT: In other words, did you come in and relieve the other.

MISS KASEN: No.

THE COURT: Was it another time later in the day?

MISS KASEN: No, it was about the same time, but dictated by different people.

THE COURT: What?

MR. MATTHEWS: Dictated by different people.

THE COURT: I see.

MR. MATTHEWS: All right, Miss. Thank you.

MR. FRAZER: I would also like to note that I have subpoenaed the records of the Telephone Company and who else—we have issued subpoenas——

MR. MATTHEWS: Now, that is immaterial for this record, what they have done in the preparation of their case.

MR. FRAZER: For attendance today.

MR. MATTHEWS: I object, if your Honor please.

THE COURT: I suppose they have a right to show their offer because they have an exception to my refusal to admit it.

MR. MATTHEWS: Your Honor will allow me an exception to this statement by counsel?

(Which exception is hereby allowed and sealed accordingly.) (Sealed)

MR. FRAZER: We have issued subpœnas against William J. Egan and learn he is not available: Mr. Michael Breitkopf, Judge Felix Fortenza, Mr. Herman Kapp, Mr. Louis Freeman, Mr. Daniel McGee and Mr. Edward Reilly, and I would offer the testimony of all of those witnesses as part of my offer.

MR. MATTHEWS: Oh, I object to that. These men are here, I suppose.

THE COURT: You object to the testimony though, Mr. Matthews.

MR. MATTHEWS: Oh, I could hardly say the word "object." I can hardly imagine this Court is going to tolerate much longer this parade pro Thomas.

MR. FRAZER: I understand that your ruling would exclude the testimony of any of those witnesses at this time.

THE COURT: That is correct.

MR. FRAZER: And for that reason I would ask an exception to the overruling of my offer and to be permitted to excuse them from attendance in response to the subpœna at this time but I trust that the subpœna may be considered as still effective for rebuttal purposes, that they are still under orders of the Court to appear here when duly notified.

(Plaintiff's counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

CHARLES C. WEBBER, resumed.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Dr. Webber, have you given your name and address to the stenographer already?

A. I did not give my address.

Q. Will you do so then?

A. My office address is 150 Fifth Avenue, New York City.

Q. And what is your work?

A. I am the secretary of the Methodist Federation for Social Service, a national organization, with Bishop Francis J. McConnell as its president. I am also a Methodist minister in good and regular standing, a member of the New York East Annual Conference of the Methodist Church.

Q. Now, on the evening of May 7, 1938, did you have occasion to go to Jersey City at Journal Square?

A. I did.

Q. Will you state what you did and what you observed on that occasion?

A. I arrived in Jersey City around about 5:30 on the afternoon of May the 7th. I had my evening meal in one of the restaurants just off the square and then I observed a gathering of the people in Journal Square and the police officers, and then I conferred with the newspaper men relative to the situation, and at around about eight o'clock that evening, as I recall it, I was standing with a small group of newspaper men just off the curb in Journal Square when I observed a man by the name of Mr. Timothy O'Brien, of the Catholic Union of the Unemployed, passing out leaflets of a yellow character about letterhead size. I saw a police officer take the leaflets out of the hands of Mr. O'Brien and then disappear in the group on the sidewalk.

Q. Now, may I show you a leaflet here and ask you whether you can identify it—this is marked Exhibit P-7—and ask you whether that is the leaflet to which you had reference?

A. I have here, counsel, a copy of the leaflet and if I may compare it——

Q. Yes, surely.

A. —that is the same leaflet. I observed Mr. Timothy O'Brien, of the Catholic Union of the Unemployed, passing out leaflets of that character and then I saw a police officer take the leaflets out of Mr. O'Brien's hands and then move on into the crowd on the sidewalk. Mr. O'Brien then stepped down off from the curb and came out to the little group of newspaper men and as he did so the crowd around gathered about the newspaper men. Mr. O'Brien told his story to the newspaper men and after he had finished his preliminary statement a man who had pushed his way in and was standing at Mr. O'Brien's left asked Mr. O'Brien——

MR. MATTHEWS: No, I object, if your Honor please, as hearsay.

MR. FRAZER: The general res gestae of the evening.

THE COURT: I have already ruled on that. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Well, I haven't objected on this record and I want to state my reasons. Here comes a man into this courtroom and relates an occurrence covering a period of hours and then seeks to relate a conversation between two people, one of whom allegedly was a stranger. If that is according to the rules of evidence then indeed this Federal Court must have different rules than I studied. I object to it on the ground it is hearsay.

THE COURT: You may have an exception.

MR. MATTHEWS: I want an exception, please, sir.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. You may answer.

A. This gentleman asked Mr. O'Brien if he had any more of the circulars——

MR. MATTHEWS: I object because this man is not identified.

THE COURT: It is not offered for the purpose of identification; it is to show the distribution of circulars.

MR. MATTHEWS: The conversation is between a man who is not identified. How do we know but it might be one of their own? What right have we to be bound by that, Judge Clark, please?

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) This gentleman asked Mr. O'Brien if he had any more of the circulars and when Mr. O'Brien produced some from underneath his vest this gentleman seized the leaflets and immediately disappeared in the encircling group. A moment or two after that a group of young men, I would judge between the ages of eighteen to twenty-four, athletic type, charged into the group of newspaper men, of which Mr. O'Brien and I were a part, and charging into us we were split apart in the melee, and I found myself a moment after that alongside of police officer, uniformed officer No. 947.

Q. May I ask whether any effort was made on the part of the police there to stop that rushing that you just described?

A. None whatever. As I found myself alongside of police officer No. 947 one of the young men who had charged

into the group, struck a man and I asked police officer 947—(interrupted)

MR. MATTHEWS: I object on the ground that it is hearsay.

MR. FRAZER: Oh, no, it is not hearsay.

MR. MATTHEWS: I object on the ground that it is hearsay.

THE COURT: I heard you. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) I asked police officer No. 947 to arrest the assailant. He refused pointblank. I reported the episode to the newspaper men. One of the newspaper men said to me, "Reverend, you had better——"

MR. MATTHEWS: I object to what the newspaper man said to him.

THE COURT: I sustain that.

MR. FRAZER: Exception, please.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Go ahead.

A. A short time after that a group of young people gathered at one end of the square in the midst of the multitude that had assembled there and they started singing "My Country 'tis of Thee, Sweet Land of Liberty." At the close of the first verse they shouted "Hurrah for O'Connell and Bernard." Then they were brushed aside and forced to go out into the rest of the group because of the fact that once more a group of persons forced their way into their midst and compelled them to break up their group.

Q. Were there any police around at that time?

A. I didn't see a policeman in that immediate situation at that part of the square. Of course, there were police in other parts of the square.

Q. How many, were they numerous or few?

A. At that particular time I cannot give you a judgment as to how many there were. I would judge—this is purely an estimate—that in the square at that time there were approximately one hundred policemen.

Q. Now, did anything else happen that you saw there?

A. About eleven o'clock that night a man was knocked to the ground and the assailant fled past me. He was taken by officers into a nearby store.

Q. Who, the one fleeing?

A. No, the man who was injured.

Q. What happened to the one who was fleeing?

A. He escaped into the group, into the surrounding group.

Q. Any effort made to arrest him?

A. I did not observe any.

Q. What happened then?

A. I stayed until about 11:30 and then returned to my home.

MR. MATTHEWS: No questions.

MR. FRAZER: Your Honor, I had supposed that a number of witnesses whom I have produced would be able to go right on with my proof but in view of your Honor's ruling I am temporarily out of witnesses.

THE COURT: Could we adjourn at this time to quarter of two?

MR. MATTHEWS: Could we have an extra ten minutes this noon?

THE COURT: Two o'clock, Dean Frazer, two o'clock.

(Recess.)

AFTERNOON SESSION.

THE COURT: Are you going on, gentlemen? Have you some more witnesses?

MR. FRAZER: I have Mr. Macri.

THE COURT: All right.

SAMUEL MACRI, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Macri, you are associated with the Committee for Industrial Organization?

A. I am the assistant regional director of the Committee for Industrial Organization.

Q. And are you a member of any union yourself?

A. Yes, I am a member of the United Textile Workers of America.

Q. Will you speak a little louder?

THE COURT: A little louder, please.

Q. Do you know whether the United Electrical Radio and Machine Workers of America are associated or affiliated with the committee?

A. They are affiliated with the Committee for Industrial Organization.

THE COURT: Let me ask you, Mr. Macri, for all of our convenience, have you got a table, some printed document or typewritten document, giving the set-up of the CIO, what unions belong and all that?

THE WITNESS: The only way I could give you that, your Honor, would be through our office.

THE COURT: Well, could your office get one and have it put in the record?

THE WITNESS: I believe that we can do that.

THE COURT: So we would know more about it—just merely for convenience, not as evidence.

Q. You, yourself, are one of the plaintiffs in this cause, are you not?

A. That is right.

Q. And is the United Rubber Workers of America, one of the plaintiffs, also affiliated with the CIO?

A. They are affiliated with the CIO.

THE COURT: You are a garment worker, you say?

THE WITNESS: No, textile.

THE COURT: Oh, I beg your pardon. What is that? "Textile" is a broad word.

THE WITNESS: Well, I formerly worked in the silk mills.

THE COURT: Where?

THE WITNESS: In Allentown, Pa.

THE COURT: Making rayon or making silk?

THE WITNESS: Silk.

THE COURT: Weaving silk?

THE WITNESS: Weaving silk.

Q. Where were you on June 1st when this trial commenced, Mr. Macri?

A. June the 1st?

Q. Yes.

A. I was in the hospital.

Q. What hospital?

A. Beth Israel.

THE COURT: Did you say how you came to New Jersey from Allentown, Mr. Macri?

THE WITNESS: How I came from Allentown to New Jersey?

THE COURT: Yes.

THE WITNESS: I was assigned to New Jersey.

THE COURT: By whom?

THE WITNESS: By John L. Lewis.

THE COURT: You were working actually in the mill at the time?

THE WITNESS: No, I was at that time organizer for the Steel Workers Organizing Committee.

THE COURT: Where were they?

THE WITNESS: Up in Allentown, Pa., and vicinity.

Q. Now, do you know what circumstances brought about your coming to this part of the country?

A. Yes.

Q. Will you state briefly what they were.

A. I was called in to Washington, D. C., by John L. Lewis and we were assigned to different localities at that time and I was assigned to New Jersey with William J. Carney to organize the unorganized workers in this territory.

Q. The whole state of New Jersey?

A. The whole state of New Jersey.

Q. And did you have any specific relations with the American Home Products Company?

A. I did. Workers in the latter part of September and the early part of October——

THE COURT: Where are they and what do they do?

THE WITNESS: At the American Home Products; it is a cosmetic plant.

THE COURT: And where is it?

THE WITNESS: In Jersey City.

THE COURT: How many men does it—you will excuse my doing it because I think it clarifies it, at least it is something I want to know and maybe it will be useful to me. How many people work there approximately?

THE WITNESS: Approximately around about 1200 or 1400 thereabouts, that is office force and production workers.

THE COURT: Did you give the address in Jersey City?

THE WITNESSS: I believe it is 257 Cornelison Avenue.

THE COURT: Go ahead, Dean Frazer.

By MR. FRAZER:

Q. Now, what was your relation with them?

A. Some of the workers came to our office in the latter part of September or early part of October and they wanted to organize under the CIO because of the terrible condition that existed in the plant as to low wages and abuses from the foreladies and foremen in the shop; so from then on we started to organize the workers. We gave them application cards for them to go in and sign the workers up, although they wanted to go out on strike, and I had cautioned them not to strike, that since the Wagner Act gave them the right to belong to an organization of their own choosing, and once we had the majority of the workers we could go into collective bargaining with the employer. Immediately after that the employer found out about the activities going on in the plant and gave an increase in wages, posted a notice up on the bulletin board, increasing the wages from two to four cents an hour increase, and seven days paid holiday, and some other concession, and immediately after that discharged these active workers.

THE COURT: What do you mean by "these active owrkers," Mr. Macri? Who were they?

THE WITNESS: I mean the workers that the employer found out became members of the organization and were soliciting for membership.

THE COURT: What were their names, do you remember?

THE WITNESS: Your Honor, I wouldn't like to give the names of these workers due to the fact that they probably will be ousted again. We had plenty of trouble with the employer to reinstate some of these workers back into the plant.

MR. MATTHEWS: I think, your Honor, under the Wagner Act, they may not be discharged.

THE COURT: Well, I was going to ask him, Mr. Matthews. My next question was going to be, couldn't they take some legal proceeding under the Wagner Act?

THE WITNESS: We have done that.

THE COURT: You have done that?

THE WITNESS: That is right.

THE COURT: I was going to ask him, Mr. Matthews.

Q. You did that in the case of the American Home Products Company, didn't you?

A. That is right.

Q. And you had a proceeding before the National Relations Board?

A. That's right.

Q. Is that right.

A. That is correct.

THE COURT: And the men or women were reinstated?

THE WITNESS: They were reinstated; two of them were reinstated with back pay, and the others were reinstated without any back pay.

Q. Do you know whether the American Home Products Company is engaged in interstate commerce?

A. It is engaged in interstate commerce.

Q. Now what did you do about headquarters? Did you establish any headquarters?

A. Yes.

THE COURT: Before we come to that, did the American Home Products employees form a branch of your union?

THE WITNESS: Well, we were in the midst of organizing the workers. We were getting them as members of our organization.

THE COURT: Yes, but did they form a branch?

THE WITNESS: Well, we just didn't have the opportunity to set up a local and grant a charter to them.

THE COURT: Why was that?

THE WITNESS: Because of the fact that immediately after that the employer began to discharge the workers, and due to the interference on the part of the detective that was watching our office continually, and no doubt reporting back to the employer——

MR. MATTHEWS: I ask that that be stricken out, no doubt reporting back.

THE COURT: Yes. Go ahead.

THE WITNESS: And the interference on the part of the detective who was watching our office.

THE COURT: Well, what was his name?

THE WITNESS: A man by the name of Fitzgerald and then there was three other detectives.

THE COURT: What were their names?

THE WITNESS: I don't know their names.

Q. Now, you referred to your Jersey City office?

A. That's right.

Q. And whereabouts was that located, Mr. Macri?

A. At 216 Academy Street.

Q. Now, will you state what this interference by the detective consisted of.

A. Just as soon as I opened up the office on October 7th a gentleman come in there in the afternoon and posed as a newspaper reporter. I asked him what his name was and he said his name was Joseph Hartness. So he asked me if any meeting was going to be held that night.

MR. MATTHEWS: I object to this conversation, your Honor, please; it is hearsay.

MR. FRAZER: He will identify this man who gave his name as Hartness, if that was his name.

MR. MATTHEWS: I still object to it as hearsay.

THE COURT: It is not offered for the truth. I will allow it.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Go ahead, Mr. Macri.

A. So he showed me his press card, said it was his press card, but I didn't get a chance to see it, and he stuck it in his pocket, and after I told him that there wasn't any meeting that I knew of, he walked out, and immediately after he walked out I went to the telephone booth and I called up the Hudson *Dispatch* and I asked them if they had a reporter——

MR. MATTHEWS: I object, your Honor please, to any conversation with the Hudson *Dispatch*.

MR. FRAZER: It is identification of this man.

THE COURT: He said he was from the Hudson *Dispatch*.

THE WITNESS: That's right.

A. (Continuing.) So I talked to the girl in the office and asked if they had anyone by the name——

MR. MATTHEWS: I object to the conversation with the Hudson *Dispatch* over the telephone.

THE COURT: I suppose technically we would have to show that they had nobody by the name of Harness, if that is the fact.

MR. MATTHEWS: There is a way of doing it.

THE COURT: I say technically——

MR. FRAZER: I take it he is now showing what information he obtained from the reference to which he was pointed.

THE COURT: However, whatever the Hudson *Dispatch* person says could not be evidence.

Q. Well, did you find out whether he was employed there or whether he had some other employment?

A. He was not employed there; the editor told me.

MR. MATTHEWS: I object and ask that that be stricken out.

Q. What employment did you learn that he did have?

A. Well, he was a detective, a fellow by the name of Fitzgerald.

Q. Detective for whom?

A. For the City of Jersey City.

Q. A member of the police force there?

A. That's right.

Q. Were you in charge of the Jersey City office?

A. I was.

Q. Now, will you state what this man who represented himself to be Mr. Hartness and who you found out was actually Mr. Fitzgerald, what he did in relation to your office?

A. Ever since we opened up our office this Fitzgerald would be stationed right across the street in a corner and watch all activities that was going on in our office. Every time that there is workers would come up to our office they would be interfered and molested. They had as high as four members of the detective force there watching our office at all times. At one time one of our workers come into my office and said——

MR. MATTHEWS: When was that? May we have the date, please?

THE WITNESS: It was either on October the 22d or in November.

Q. Mr. Macri, did you make—have you a memorandum with the dates that you made yourself?

A. I have.

MR. FRAZER: I will ask that the witness be allowed to refer to that to refresh his recollection.

MR. MATTHEWS: I object to it unless his memory is exhausted. The preparation of a witness in this manner is too well known to me after a quarter of a century and the rule is if he cannot remember then if he made a memorandum at the time he may use it.

MR. FRAZER: No, that is not the rule, sir. The rule is if he made a memorandum which he knew at the time was a correct memorandum of the facts and that the reference to that memorandum, irrespective of the time at which it was made, does refresh his memory, then he may refer to that memorandum.

MR. MATTHEWS: Which is the same thing that I said, to refresh his memory.

Q. Now, Mr. Matthews has asked specifically for this date. By referring to your memorandum would you be able to give it?

MR. MATTHEWS: He has given it, October 22d or November.

MR. FRAZER: No, he said "or November."

MR. MATTHEWS: I am satisfied, content, with respect to the date.

Q. Will you refer to the memorandum and state the date, if your memory is refreshed by the memorandum.

MR. MATTHEWS: I would like to examine him on the memorandum if he is going to use it.

CROSS-EXAMINATION (as to Memorandum).

By MR. MATTHEWS:

Q. Let me see the memorandum.

MR. FRAZER: He has no right to see the memorandum.

A. I want to see what my counsel says.
Q Oh, you do.

MR. FRAZER: I object to his seeing the memorandum.

THE COURT: Let me see it. It is just a series of dates, Mr. Matthews.

MR. MATTHEWS: Yes, your Honor.

THE COURT: Wait a moment—with events after them.

MR. MATTHEWS: Yes, but I would like to examine on it, your Honor, as we are entitled to, I think your Honor will allow under the rule, as to when it was made.

MR. FRAZER: Yes, you may do that. You have no right to examine the memorandum itself.

MR. MATTHEWS: I don't know why.

THE COURT: It would seem to me, Dean Frazer, there wasn't any objection to letting him look at it. Have you seen it?

MR. FRAZER: I have no particular objection, no, sir.

By MR. MATTHEWS:

Q. Who typed that memorandum?

A. It was typed at the office.

Q. When?

A. They typed it yesterday, re-typed it.

Q. Where is the data that you re-typed it from?

A. The data?

Q. Yes, the data.

THE COURT: Data.

Q. Data. The Court corrects me.

A. From affidavits that we have.

Q. In other words, you took the affidavits in the case and made this memorandum from the affidavits in the case, is that correct?

A. Yes.

MR. MATTHEWS: Then I object to the use of the memorandum as not being a memorandum made at the time by the witness but merely a repetition of what is in the complaint.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Whose affidavit did you refer to, Mr. Macri?

A. My affidavit.

Q. Yes. And this is a summary of what you had already contempo[illegible]ously stated?

A. That's right.

MR. FRAZER: For convenience of reference.

MR. MATTHEWS: If your Honor pleases, this memorandum is not such memorandum as may be used in the case because it is not made contemporaneously with the events recorded thereon. It is stated by the witness that it is a memorandum made up by you——

By MR. MATTHEWS:

Q. You typed it? Did you type it?
A. I did not type it.
Q. Who typed it?
A. I told you the girl typed it.
Q. The girl where?
A. From our office.
Q. Well, where did she get the data from?
A. From the affidavits that I made.
Q. From the affidavits in the bill, is that right?
A. Yes.

MR. FRAZER: No.

MR. ERNST: No.

MR. FRAZER: No, he never said that.

Q. From what affidavit? From what affidavit? Your counsel corrects me, in concert. From what affidavits?
A. From the affidavits.
Q. What affidavits?
A. Of events.
Q. Of what events? What affidavits?
A. Events that took place in Jersey City.
Q. Where did you take those affidavits and when?
A. (No answer.)
Q. Where did you take those affidavits, and when?
A. Well, I gave the affidavits to our attorney.
Q. When?
A. I don't recall.

Q. Well,——

THE COURT: You mean when did you give them, or do you want to know the dates on the affidavits?

MR. MATTHEWS: Well, I don't know what they are at all, these affidavits.

THE COURT: Well, I do want to know, Mr. Witness, I don't want to lead you or anything, but isn't it a fact that when things happened you wrote them down in affidavit form?

THE WITNESS: That is right.

Q. Well when did you write your first affidavit and where did you take the affidavit?

A. I wrote every affair that took place in Jersey City, and I wrote them in our office.

Q. Well; where is the original of what you wrote?

THE COURT: Mr. Frazer, Dean Frazer has it.

MR. MATTHEWS: Oh, pardon me, if your Honor please.

THE COURT: I think that is what he said.

MR. MATTHEWS: May I examine—now, no, that's typewritten; that's not written.

MR. FRAZER: Oh, my Heavens!

THE WITNESS: Dean Frazer has got all the affidavits that took place——

Q. I know he has. When did you make your first affidavit? When?

THE COURT: You mean what day of the month and year?

MR. MATTHEWS: Yes.

Q. Well, haven't you made them all since this case started?

A. I have made them before the case started.

Q. All right. Then when did you make the first one, if you made them before the cast started?

A. Well it is hard for me to say just exactly the date and month.

Q. Well, were they in 1938 or 1937, or was it, the first one, in 1938 or 1937?

A. In reference to the affairs that took place, it was from 1937 and 1938.

Q. Now what was your system? At that time there was no case pending in Court. Now when did you make your first affidavit, whom did you take the affidavit before?

A. They were all filed in our office.

Q. Whom did you make the affidavit before?

A. I said that they were filed in our office, every incident what happened over there in Jersey City. I have typed them out in our report and made them in affidavit form.

Q. All right. Before whom did you swear to your first affidavit?

A. I didn't swear to the affidavit. I am telling you that I made the happenings, what happened—I wrote them down.

Q. Where is what you wrote down?

A. There they are (indicating papers in hands of Mr. Frazer).

MR. MATTHEWS: Let me examine those.

MR. FRAZER: Oh no, I won't.

MR. MATTHEWS: Oh. Now the risibilities of the sympathizers for the CIO should not make any difference in this instance in your not showing me those. If I cannot examine the data——

MR. FRAZER: You may examine the witness, when I have asked the questions which are contained in these papers that I have in my hand.

MR. MATTHEWS: Pardoning your departure from your usual gentlemanliness, if I can't examine the data

upon which a memorandum is made, then I object to the memoranda being used and my objection is well put.

MR. FRAZER: May I ask the Court for a ruling as to whether this memorandum can be used to refresh his memory as to dates?

THE COURT: Well, of course, that memorandum technically speaking can't be used, Dean Frazer.

MR. FRAZER: Very well. I will ask an exception and we will do without the memorandum. It merely takes a little longer.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

By MR. FRAZER:

Q. Well now, we were discussing, and Mr. Matthews said that he was satisfied with the 22d of October or November as a sufficient identification of the date, the operations of the Detective Fitzgerald and other members of the police department of Jersey City in annoyance of the workers at your headquarters.

A. That is right.

Q. Will you go on?

A. At one time——

MR. MATTHEWS: When?

THE WITNESS: October 22d.

MR. FRAZER: Now——

MR. MATTHEWS: October 22d?

THE WITNESSS Yes.

Q. Go ahead, Mr. Macri, despite the interruptions of counsel.

A. One of the workers come into the office while I was busy and he said that——

MR. MATTHEWS: No, I object to the conversation of a worker in his office on October 22d. The worker is the best evidence.

THE COURT: What happened as a result of that, Mr. Macri?

THE WITNESS: That he was molested——

MR. MATTHEWS: I object to that, if your Honor please. That is a conversation. That worker is the best evidence.

THE COURT: What happened as a result of what he said? You must tell only things within your own knowledge, Mr. Macri.

THE WITNESS: That he was molested.

THE COURT: That wasn't withine your own knowledge You must tell what you did or what you saw.

THE WITNESS: Well, immediately after that I went outside and stood on the street corner and smoking my pipe, and there was four detectives in a machine, and this Fitzgerald was there, and when I come out on the street corner, one of the detectives rushed right across the street and stood there for a few minutes. Then he come right over to me and he said, "I don't want you to molest any of the workers."

MR. MATTHEWS: I object, if your Honor pleases.

MR. FRAZER: This is an officer.

MR. MATTHEWS: I object to what the detective said to him. The detective is the best evidence and is available.

MR. FRAZER: This is an officer, one of the agents of the defendant.

MR. MATTHEWS: I object as hearsay.

THE COURT: Now, Dean Frazer, we will have to confine ourselves to the rules of evidence.

MR. FRAZER: We are not offering this for the question of whether what he said was true or not. We are offering it as a proof of an event by one of the police department of Jersey City, what they did.

THE COURT: Do you know the man's name who said this to you?

THE WITNESS: I don't know him.

THE COURT: How do you know he is a detective?

THE WITNESS: He was a detective because he showed me his badge.

MR. MATTHEWS: Well, if your Honor please, anybody could show him a badge; anybody could show him a badge.

THE WITNESS: He said he was a police officer and showed me his badge.

MR. MATTHEWS: I object and ask that that be stricken out. Now, if your Honor please, I am perfectly willing to be confronted with evidence that is legal evidence, but to have the organizer come in here and tell us this story about people that they met whom we don't know, whether they met or not, that is not legal evidence.

THE COURT: Go ahead.

THE WITNESS: So he asked what I was doing——

MR. MATTHEWS: I object, if your Honor please.

THE COURT: Just what happened. Can't you tell what happened without saying what he said?

MR. FRAZER: He can't say very well what happened, may it please the Court, if what happened was a conversation and your Honor will not allow him to testify to the conversation. What happened was a conversation.

THE COURT: We certainly cannot, Dean Frazer, introduce the testimony of somebody who he does not know at all, who simply showed him a badge. There is no use having errors in the record for anybody's sake.

MR. FRAZER: As an identification as a police officer. He was in the company——

THE COURT: I don't care——

MR. FRAZER: He was in the company of Officer Fitzgerald.

THE COURT: That doesn't make him a police officer. Did you make any effort to identify these other people?

THE WITNESS: I did not.

By MR. FRAZER:

Q. What happened with these people? What did they do?

A. Told me not to molest——

MR. MATTHEWS: I object to what they told him.

Q. What did you do? Did you say anything to him?
A. I told him that——

MR. MATTHEWS: I object to his conversation with them.

MR. FRAZER: Oh, not at all. That is a fact. That's not hearsay.

MR. MATTHEWS: Pray why isn't it hearsay? If it is hearsay what they said to him, it is hearsay what he said to them. They are identified.

THE COURT: You can't have conversations with unidentified people. Now if it has anything to do with Fitzerald, you can say it.

MR. FRAZER: What he stated I understand from Mr. Matthews, I understand that I can bring this man, if

I can identify him, to testify to what he said. He is objecting because it is hearsay, and the person who made the remarks is the one to make the statement. Now, on the other side of the conversation I have the man who made the remarks; I want his remarks to be in evidence.

THE WITNESS: Go ahead with the story?

THE COURT: Tell us what you said to somebody you identify, Mr. Macri, not to an unknown person.

A. (Continuing.) Well, that, if I cannct complete my story, your Honor, is just exactly what happened and I am telling the absolute truth, just exactly what happened there in that situation with these detectives where the workers were interferred.

THE COURT: Well, they were detectives? Mr. Marci, you apparently didn't take the trouble to identify.

Q. Do you remember what plate number he showed you, was there any car there at the time?

A. Yes, his car was H-three—I don't exactly know just exactly the rest of the numbers because I had them jotted down.

Q. If I show you the statement which you submitted to me some time ago would your memory be refreshed as to that car number?

A. Yes.

MR. MATTHEWS: Now, your Honor please, I don't think he should be allowed to be refreshed by a statement unless I see the statement or the memorandum that he made at the time.

MR. FRAZER: I will show you the car number, if that is what you want to see.

MR. MATTHEWS: Thank you. The statement—you don't need to hide it. If you don't want me to look at it I won't do it, I am gentleman enough for that; but

the proposition is this: if he made a memorandum at the time——

THE COURT: Mr. Matthews, I think you somewhat misconceive the rule about refreshing a witness' recollection.

MR. MATTHEWS: I believe not. I use it every day.

THE COURT: I have had occasion to look it up recently. My own recollection of it unrefreshed is that it is very broad, surprisingly broad.

MR. MATTHEWS: No, if your Honor please, may I with respect——

THE COURT: Would you like us to look it up?

MR. MATTHEWS: I would be very glad to have your Honor refresh your recollection on it because a memorandum must be made at the time and unless it is made at the time it is utterly valueless.

THE COURT: Do you want me to fatigue my unrefreshed recollection by looking it up?

MR. MATTHEWS: If you will accept my recollection I will give it to you; otherwise we will look it up because it is important, your Honor, please.

MR. FRAZER: May I state my recollection? I disagree with Mr. Matthews on the rule.

MR. MATTHEWS: As my former dean, of course he has the prerogative of disagreeing with me. All right, dean.

THE COURT: Pass onto some other subject, please.

Q. Now, these operations which are now the subject——

THE COURT: May I ask, Mr. Macri, did you check this number, did you take the trouble to check this number?

THE WITNESS: I took the number from the car that he had always driven around.

THE COURT: And then did you check it and find out where it came from?

THE WITNESS: I did not check it.

MR. FRAZER: I think it would be interesting to let the defense have the number of the car.

MR. MATTHEWS: Now, I object to anything—and while I could not call my brother Frazer a Greek, your Honor please, I don't want him to bear me a gift.

Q. Now, did anything happen to you on October 26th?

A. Yes, I had my car parked as usual on Summit Street and when I came there in the morning around ten o'clock I parked my car and there was other cars there, and around about 2:05 in the afternoon I went to get my car and they had my car tagged; no other car was tagged but mine was.

Q. Were you in company with anybody on that day?

A. Thomas Cometa, one of the CIO representatives.

THE COURT: You see we don't know all these people.

MR. FRAZER: He was a witness here earlier.

THE COURT: Oh, he is the one who was a witness?

MR. FRAZER: Yes.

Q. Now, will you turn your attention to the date of October 28th——

A. On October 28th I had a conference arranged with the officials of the Standard Cap and Seal to negotiate an agreement.

THE COURT: Now again, let us go into who they are. I think we had them once, didn't we?

MR. FRAZER: Mr. Cometa testified to them, I believe.

THE COURT: That is the same company?

THE WITNESS: That is the same company.

A. (Continuing.) And Mr. Cometa and I left the office between 12:15 and 12:20 to be there for the conference at one o'clock, and after we left the office Mr. Fitzgerald, who was stationed at the corner, saw us and immediately when we got down to about a block or a block and a half from our destination on Bay Street, we was right on Grove Street, when a car pulled up alongside and said, "Pull over to the side." So we pulled out to the side, and out comes, out of the car, two detectives and a sergeant of the police and one of them, the police sergeant, one of the detectives came on the right and another detective came on the left-hand side of the car. The police sergeant came to the door, opened up the car and says——

MR. MATTHEWS: I object to what the police sergeant said as hearsay.

MR. FRAZER: Well, now, I think——

THE COURT: It is already in evidence from the other witness. You may answer.

MR. MATTHEWS: Your Honor will allow me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

THE COURT: Without objection, according to my recollection.

MR. MATTHEWS: I didn't hear your Honor.

THE COURT: I said without exception at that time is my recollection. However——

Q. All right, Mr. Macri.

A. "Where do you come from?" Mr. Cometa said. "Newark." "What are you doing here with Pennsylvania

license plates?" Mr. Cometa said, "We are going here on a conference, we are here on business." So immediately the other detective come over on the left-hand side and says, "Open the door." He said, "Let me see your driver's license, let me see your credential," and I showed them both. So the police sergeant begin to frisk Thomas Cometa and then he finally looked in the compartment and he saw the application cards and he begin to read them, begin to take——

Q. What kind of application cards were those, Mr. Macri?

A. CIO application cards for membership.

Q. What was the compartment you refer to?

A. The compartment of my car.

Q. Whereabouts in the car?

A. On the right-hand side right up on the dashboard. Then the police sergeant said to me, "Come on, get out."

MR. MATTHEWS: I object to all this conversation. May I have a general exception?

THE COURT: Yes.

MR. MATTHEWS: Thank you. Go ahead, sir.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) I got out of the machine and he begin to search me, take out my papers, read them, as if I was some kind of a gangster.

MR. MATTHEWS: I object and ask that that be stricken out, if your Honor please.

THE COURT: It will be stricken out, the last part.

Q. Did he do it gently?

A. Well, I wouldn't say he did it gently.

Q. All right.

A. Then after he searched us he asked me where we were going and I told him that we were here on business

and he says, "Where to?" I said, "We have an appointment at one o'clock with the officials of the Standard Cap and Seal." So he then said, after he saw the application card and read them again, he said, "Now be sure that you don't do any soliciting in this town or God help you, I will take care of you." So he said, "All right, go on." So he finally left us go and he followed us up till our destination; when we got to 150 Bay Street we went up for our business and then finally we didn't see them when we come out about maybe an hour or two hours later and that was that incident.

Q. Did the other detectives do anything in relation to the car while the sergeant was——

A. The one detective that was on the left-hand side, he got inside of the car and he ransacked everything, upset the seats, took out, whatever he was looking for I don't know, and I asked him for the driver's license and also the credential and when I asked him that he says, "All right, don't worry, you will get them in time." Finally after that he did give them to me.

Q. Now, Mr. Macri, did you make any efforts to obtain halls for meetings?

A. I did.

Q. Will you tell us about those efforts?

A. I went around to the various halls such as the Peoples Center, where we tried to get that place for a mass meeting for December the 3rd. Everything was arranged that we were going to have the place through one of the other organizations that had made the arrangement, and finally when it came to the time for the meeting date we found out that we couldn't have the place. We had got an inkling of what was happening so in order to make an investigation I went and saw Mr. Mike Zlepko, who happens to be the manager, about the place and he said that we couldn't have the place.

MR. MATTHEWS: Now, I object to that conversation.

THE COURT: I have already ruled, Dean Frazer, as you know, that the hall owner must be called.

Q. Now, did you get the hall?

A. We did not get the hall.

Q. And had you made any preparations for the function that you were going to hold there in reliance upon the original arrangement?

A. That's right.

Q. What had you done?

A. I went then to the White Eagle Hall.

Q. What had you done about this hall that you had?

A. At the Peoples Center?

Q. Yes. Had you made any preparations?

A. We had a meeting with the trustees and they wanted $3000, and I told them that it was impossible for the CIO——

MR. MATTHEWS: I object to this conversation, if your Honor please.

Q. All right. Now, you didn't get that hall?

A. I didn't get the hall.

Q. Do you know who the trustees were, do you know their names?

A. I know them by seeing them; I don't know their names.

Q. Now, did you make any other effort after that?

A. Yes, we had a conference the next morning, on Saturday, with the rest of the committee from the Peoples Center in order to come to some arrangement in order to get the hall, and they were afraid of giving us the hall——

MR. MATTHEWS: I object, if your Honor please, and ask that that be stricken out.

THE COURT: Yes.

Q. Well, did they get the hall, did they give you the hall?

A. They did not.

Q. Now, did you make any other efforts to get a hall?

A. Yes; on November 27th I went to the White Eagle Hall and saw a lady who was owner or in charge of the

place by the name of L. Gorzynski, and after discussion and asking for the rental of the place I paid a $5 deposit and immediately after I left there; we had the place for December the 7th—they didn't have it for December the 3d, so we had to take the place for December the 7th, that's the only date that they had open.

They gave me a receipt for $5, for the meeting. Later on she sent me a letter that we couldn't have the hall, and they sent it by special delivery letter. Finally they sent a second letter with the $5 deposit, saying that we couldn't have the hall.

Q. Did these people know for whom you were applying for the hall?

A. Yes, the Committee for Industrial Organization.

Q. Now, what about Columbia Hall? Did you try anything there?

A. On November 27th, in order to have a meeting for December the 3d, we went to the Columbia Hall on Ocean Avenue, and I asked for—since there was three people there, I asked who was the manager, and they pointed out to me that the fellow by the name of Jack Fligger was the manager. I asked him if his hall was open——

MR. MATTHEWS: I object to the conversation.

MR. FRAZER: This is a statement of what he did to obtain a hall.

THE COURT: You may answer.

MR. MATTHEWS: I object to the conversation as hearsay.

THE COURT: What is the question?

THE REPORTER: It is in the middle of an answer: "Since there was three people there, I asked who was the manager and they pointed out to me that the fellow by the name of Jack Fligger was the manager——"

THE COURT: That certainly is not hearsay. Go ahead.

THE REPORTER: —"I asked him if his hall was open——"

MR. MATTHEWS: That is the part I object to. I object to the conversation.

THE COURT: Did you get the hall?

THE WITNESS: No, but there is something that leads right up to it, your Honor.

Q. What did Fligger do?

A. After we had made the arrangement that I pay the —he rented the place to us and he said, "It is $20 rental."

I immediately got in a telephone booth and called up our office to tell them that we got a hall for December the 3d, and immediately this Jack Fligger left the office and two of my men who were with me, there were four of us, they went over and followed this Jack Fligger over to the police station across the street, and we waited for Jack Fligger, the manager, to came back. Finally, after an hour or more, and I had my car parked right across from the police station, and I was in a restaurant waiting for this Jack Fligger to come back again, because we had waited so long in the hall—finally I told two of my men to move the car.

MR. MATTHEWS: No, I object to what he told. Pardon me. I ask that it be stricken out.

THE COURT: You moved the car, is that right?

THE WITNESS: Yes, we moved the car; and immediately, about ten or fifteen minutes later, this Jack Fligger come out, the manager, from the police station. So after he come back, I went into the hall and I asked him about the——

MR. MATTHEWS: I object to the conversation with Jack Fligger.

THE COURT: Sustained.

Q. Did you get the hall?

A. I did not get the hall.

Q. Now, I understand the hall had been rented to you for $20, is that right?

A. That is right.

Q. Before the visit to the police station, is that right?

A. That is right.

Q. Now, these efforts were made before November 29th, am I right, that you have just testified to?

A. That is right.

Q. Did you make other efforts to get halls later?

A. I did.

Q. Well now, interrupting, just to keep it in chronological order, will you tell me what happened to you, what you did, on the day of November 29th, 1937?

A. On November 29th, I left my room at about five o'clock, or thereabouts, to go over to Jersey City to distribute literature in the morning. When we got into Jersey City——

Q. Who are "we"?

A. Mr. McGinn, Mr. Foley and Walter Barry. So when we got over to Jersey City, I had literature in my car and I had parked in front of the United Steel Workers Office at 76 Montgomery Street, and there was a lot of policemens and detectives around the place. For blocks around there was many detectives in machines and also on foot, and also police officers. Mr. McGinn and Mr. Barry, after I parked my car in front of the place, took two bundles of the literature upstairs. After they had left, one of the policemen came over and looked at the car and inside of the car, and I thought it was advisable to move my car from that location. So I moved my car the next block and had parked my car there and handed out the rest of the literature to Mr. McGinn and myself, and I started to walk down towards the United Steel Workers' office when I was met by a number of detectives who stopped me and says, "Come on, get back."

MR. MATTHEWS: I object, if your Honor pleases, to this conversation with unidentified people.

THE COURT: How do you know they were detectives?

THE WITNESS: They were police officers.

THE COURT: Were they in uniform?

THE WITNESS: Some were in uniform and others were not.

THE COURT: All right.

MR. MATTHEWS: I object to the conversation as hearsay.

THE COURT: Well, certainly, the law is that a uniform indicates a police officer, Mr. Matthews. You may answer.

MR. MATTHEWS: Some were not.

THE WITNESS: So they said, "Get back——"

MR. MATTHEWS: Pardon me. Your Honor will allow me an exception?

THE COURT: Yes, certainly.

MR. MATTHEWS: All right.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

A. So they aid, "Get back," and they started to push me towards the car. They said, "Where's your car?"

I said, "Over there."

I said, "Am I under arrest?"

"Never mind. Get back."

So they started to push us towards my machine, and I asked them if I was arrested and they said, "Never mind."

When we got to the machine, why, he said, "Open up your car."

And I said, "Am I under arrest?"

They said, "Never mind. Open that car."

So they told one of the policemen, "You get in the machine with them."

Then he finally said to the other policeman, "You get in, too."

So when we got in the machine, he says, "All right now; drive."

I said, "Am I under arrest?"

"Never mind. Keep on driving."

So I kept on driving. Then I said, "Where are we going? To the police station?"

He said, "Never mind. Keep on going."

And finally—"Keep on driving"—I asked them again. "Are we going to the police station?"

He said, "Yes."

And we kept on driving. I was deported out of the——

MR. MATTHEWS: I object, if your Honor please, to the use of the word "deported."

THE COURT: Yes, just tell us what happened without characterizing it.

MR. FRAZER: It seems rather unimportant. It has been used by counsel many times, of course.

MR. MATTHEWS: Not by this counsel and I now object.

THE COURT: I asked him not to use the word. All right.

THE WITNESS: Go on now?

THE COURT: Yes, go on, but don't use words that characterize, just use words that describe.

Q. Where did you go to?

A. Out of the City of Jersey City. The policeman finally said, "All right leave us off here. Now, you can go

on your way." Then there was another machine in the back that was following us all the way from Jersey City. So immediately after that I went on the Pulaski Skyway, and went back into Jersey City, and I parked my car and got in a taxicab and went down to the office of the United Steel Workers, and I had a meeting with the workers, and there was a lot of photographers and newsreel men and newspaper men. So we had a meeting together. When we left the office to go down and distribute literature, we left the office and walked down towards Exchange Place to distribute our leaflets. We no sooner started to distribute leaflets, than the detective nailed me and said, "Come on."

And I said, "Am I under arrest?"

"Yes, you are under arrest."

So they took me across the street where they had a few people huddled together, and so they were guarding us there, and then one of the detectives said to a chap that was probably a janitor——

MR. MATTHEWS: I object. I object and ask that that be stricken out. What right has this man to characterize a citizen as a gangster, any more than any other citizen there.

MR. FRAZER: He didn't say gangster. He said janitor.

THE COURT: He said janitor.

MR. FRAZER: Janitor.

MR. MATTHEWS: The gallery, apparently, are laughing. I thought he said "gangster."

THE COURT: Do you think there are any gangsters in court?

MR. MATTHEWS: I wouldn't be surprised. I looked them over and while appearances are deceiving, I wouldn't want to find some of them in a dark alley.

MR. FRAZER: I think those remarks are rather improper, your Honor.

MR. MATTHEWS: The Court asked me a question. I want to be truthful to the Court.

THE COURT: Well, we were all a little bit humorous.

MR. MATTHEWS: Pardon?

THE COURT: I think we were all a little bit humorous.

MR. MATTHEWS: Yes, and that's the joy of it, Judge, once in a while. It is hard work otherwise, may it please the Court.

THE COURT: Go ahead.

Q. What happened? You were over there with the janitor.

A. Yes. The janitor was polishing some of the rails, and one of the detectives said——

THE COURT: He wasn't polishing a gun, was he?

THE WITNESS: No, I didn't see that.

A. (Continuing.) So he said, "We want to move these people into the building," and the janitor says, "Nothing doing." "But we are police officers."

"It makes no difference," said the fellow. "You can't bring them in here."

So they held us there for a while, and one of the chiefs or one of the higher officials finally came over and talked to the ones who were guarding us and said, "All right. Where did you come from?"

I said, "I came from Newark."

MR. MATTHEWS: I object. This is hearsay.

MR. FRAZER: Oh, no, this is one of the police officers.

THE COURT: Was this one of the police officers?

THE WITNESS: That is right.

THE COURT: All right.

MR. MATTHEWS: Unidentified. No way of answering testimony like that, none whatsoever; no chance for a defendant in a case like this.

THE COURT: Was he in uniform? Was he in uniform?

THE WITNESS: He was not in uniform. He was in civilian clothes.

THE COURT: All right. You can't say what he said.

MR. MATTHEWS: I ask that it be stricken. Glad to meet anything that they will give us an identification on.

Q. Did this man have a badge?
A. None that I saw.
Q. All right. Now what happened to you then as a result of the remarks that this man made?
A. They said, "Get on to the ferry."

MR. MATTHEWS: No, I object to the conversation and ask that it be stricken.

THE COURT: What happened to you as a result?

THE WITNESS: They told us to leave.

MR. MATTHEWS: Oh, I object to what they told him.

THE COURT: Where were you when——

THE WITNESS: At Exchange Place.

MR. MATTHEWS: How near the ferry?

THE WITNESS: Well, just maybe a quarter of a block.

THE COURT: Were you told by persons that you can't identify to get on the ferry?

THE WITNESS: That's right, that's right.

Q. Were there police officers in uniform there, too?
A. There was policemens in uniform there also.
Q. And were these men in plain clothes acting with the men in uniform?
A. They were.
Q. Now, say what happened.

MR. MATTHEWS: I object to any conversation.

THE COURT: You may answer.

THE WITNESS: I may answer?

THE COURT: Yes.

A. They finally told us to get——

MR. MATTHEWS: I object to the conversation.

THE COURT: I understood—it now appears that there were men in uniform at these places.

MR. MATTHEWS: Judge Clark, please, sir, a man like this that has his buddies hanging around him at every turn, could have taken numbers and identified them, and when they are not identified that's their burden and we can't take testimony and take the officials of a city like Jersey City and subject them to testimony of this kind with no chance of refutation.

THE COURT: Were there any numbers taken at all?

THE WITNESS: They did not.

MR. MATTHEWS: Judge——

MR. FRAZER: How do they take numbers if they are in plain clothes?

MR. MATTHEWS: They can't take numbers if they are in plain clothes, but it is not being allowed because they are in plain clothes, but because there were policemen among them, and they were acting in con-

cert with them. They could have taken the policeman's number. I submit, if your Honor pleases, in fairness to these defendants, that I should not have to have that testimony in.

MR. FRAZER: Sir John seems to have a conception that this was a very pleasant, orderly thing, where you could sit down at a desk and take a lead pencil or get a pen and ink and write down things. The picture, as I have it, is one of considerable physical violence, and very little opportunity to carry on this peaceful trade of writing down numbers.

THE COURT: Did you resist going on the ferry?

THE WITNESS: No, I told them that I didn't belong on the ferry, and they told me to get on the Tubes and get out of Jersey City.

MR. MATTHEWS: I object to this conversation, with all due respect to the Court.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Where did you ultimately go?

THE WITNESS: I went across the street and saw Mr. McGinn, and I got some of the literature and went to distribute one of the leaflets, when I was nabbed by a detective and he said, "Come along."

MR. MATTHEWS: No, I object, if your Honor please. Here is another instance of it. Must this case be tried in this manner?

THE COURT: What happened to you?

MR. MATTHEWS: This fellow is a professional, you know, your Honor. You can tell it by his talk, his tone

on the stand. He isn't giving you testimony. He is giving you what he has prepared, documentarily.

MR. FRAZER: I object to any such comments on the witness. If Mr. Matthews wishes to test his credibility by a proper examination I will permit that, but I shall certainly object to any such gratuitous statements.

MR. MATTHEWS: I again repeat that this man is a professional, from his very tone and his very language on the stand.

THE COURT: He is a labor organizer, Mr. Matthews.

MR. MATTHEWS: Yes, a professional CIO organizer.

THE COURT: Well, I don't characterize them.

MR. MATTHEWS: Well I do characterize that, with the Court's permission. This fellow is no babe in the woods.

MR. FRAZER: I object to the characterization and I would ask the Court for a ruling on its propriety.

THE COURT: What happened to you, Mr. Macri?

THE WITNESS: I asked him if I was arrested and he said, "Yes, you are under arrest."

So he picked—he arrested Mr. McGinn and two others.

MR. MATTHEWS: Now, if your Honor please, certainly he knows the number or the name of the man who arrested him.

MR. FRAZER: He has a perfect right to ask that on cross-examination.

THE COURT: Were you taken to the police station?

THE WITNESS: Right.

MR. MATTHEWS: Well, I object to the conversation, unless he identifies with whom.

THE COURT: We have gone to the police station now, so we are beyond that.

MR. MATTHEWS: We may go to the police station, if your Honor pleases, but he may go there with one of his own.

THE COURT: He went there under duress, I take it. Didn't you?

MR. MATTHEWS: Yes, when you get one of those babies going under duress, if your Honor please, you have got to get up early in the morning.

MR. FRAZER: I move to strike out that as gratuitously insulting.

MR. MATTHEWS: I consent that that be stricken out, not because it is insulting, but because it is not a part of the case.

SAMUEL MACRI, resumed the stand.

DIRECT EXAMINATION (Resumed).

By MR. FRAZER:

THE COURT: I have Wigmore here, Mr. Matthews.

MR. MATTHEWS: Yes, your Honor.

THE COURT: Do you want me to give it to you or do you want me to read it? We both seem to be right.

MR. MATTHEWS: That is a joy to me to be right with you. What is it, your Honor please?

THE COURT: Wigmore says: "That the paper was not drawn up about the time of the events is not an essential fault. The recollection may be equally refreshed by a recent note as by some contemporaneous record. It might, in fact, be argued that there was less danger of reliance upon the record itself and more probability

of actual refreshment where the paper was one confessedly having no value as a contemporaneous record of past recollection.

"There is adequate authority for the result thus required by principle. Yet the greater number of decisions, and most of the obiter dicta, announce as a requirement that the memorandum used must have been made 'contemporaneously or nearly so' with the events, 'at or near the time,' with the same varying phrases used in the rule for Past Recollection."

And then Professor Wigmore, with his usual clarity, goes on to point out that learned judges have made a slight confusion between the two rules, so that I am left a little in doubt as to what the current law in the Federal Court is.

MR. MATTHEWS: The law in our state court, because I use it every week, is that it must be a memorandum made contemporaneously with the event or sufficiently adjacent thereto to warrant the Court in its wise discretion calling it contemporaneous. Moreover, the second part of the rule, as Ed O'Mara and I went over it outside, is that the memory must first be exhausted.

THE COURT: I don't think Dean Frazer disputes that part of it.

MR. MATTHEWS: The first part of it is that in our state—and I take it you will follow the state rulings——

THE COURT: I would; I don't say that I should.

MR. MATTHEWS: Well, I mean that is what we usually do.

THE COURT: I ought to say also, Dean Frazer, that Professor Wigmore says the memorandum should be shown to the opposing counsel. I only say that in fairness to Mr. Matthews.

MR. MATTHEWS: May I say off the record it is so refreshing for you tell my dean that.

Q. I think you got to the police station, didn't you, Mr. Macri?

A. Right.

Q. Now, what happened then?

A. When we got into the police station there was quite a number of us that was charged with violation of the city ordinance, so they searched us, took all our personal papers, watch, everything that we had, pocketbook, and they had us huddled in the one room. Finally Chief of Police Walsh came into the room and said, "Did you search these people?" And one of the officers in charge said, "Yes, we did search them." "Give them back their belongings." So we finally got our belongings back again, so we were held in the room and we were hungry, we didn't have anything to eat, so when we went upstairs——

Q. What time did you get there?

A. Might have been after eleven o'clock or one o'clock. I don't know just the exact time, what time it was—I know, I believe it was after lunch time, and we were in before Judge Botti. We find that we were charged instead of violation for the city ordinance, violation of the distributing of literature, we were charged with unlawful assemblage. It was a surprise to all of us.

MR. MATTHEWS: I ask that that be stricken out, your Honor, please, that it was a surprise to them.

THE COURT: Yes.

A. (Continuing.) The first cases that were tried were seven of the other workers and our attorney had asked for different motions——

MR. MATTHEWS: I object, your Honor, please, to what the attorney asked for.

THE COURT: Yes.

MR. FRAZER: We have the record in evidence. It is simply an orderly narrative of events.

THE COURT: The other record is in evidence?

MR. FRAZER: Yes, your Honor, the distribution case is in evidence, the record.

THE COURT: Yes. You were going to supply the ultimate fate of the assemblage case, weren't you, from the minutes or from some record?

MR. FRAZER: We have no records of that, sir.

THE COURT: I thought it was asserted that there must be some records.

MR. FRAZER: It was asserted that there were records but I asked if they would produce them; they said no, they wouldn't produce them.

MR. MATTHEWS: I don't believe the Police Court has a record, no stenographer there.

THE COURT: No, but this unlawful assemblage case was afterwards presented to the Grand Jury, isn't that right?

MR. FRAZER: That's right, it was presented to the Grand Jury and they were held in $1,000 bail.

THE COURT: That is what was asserted.

MR. MATTHEWS: But a police court wouldn't have a record unless there was a stenographer sworn by request.

THE COURT: You read the record, Mr. Matthews, you saw what happened, that the Police Judge refused to permit a stenographer to be sworn.

MR. MATTHEWS: That, of course, is his prerogative if he wants to.

THE COURT: I am not passing on that.

MR. FRAZER: There is a statute to the contrary.

MR. MATTHEWS: There is no statute to the contrary.

THE COURT: Anyway there was a stenographer present; he allowed the stenographer to take down the proceeding.

MR. MATTHEWS: There what?

THE COURT: There was a stenographer there and the proceedings were taken down and they are in evidence.

MR. MATTHEWS: Well, unless the stenographer was sworn, of course, it would have no value unless it was the stenographer of the court.

MR. FRAZER: It is already in evidence in this case without objection.

Q. Will you go on.

MR. MATTHEWS: I object to the testimony of what the Judge said as hearsay evidence and as——

Q. You eventually got out of the police station, did you not?

A. Yes.

Q. When did you get out?

A. I was put under $1,000 bail.

MR. MATTHEWS: Now, that isn't an answer to that question, if your Honor please.

THE COURT: When did you get out?

THE WITNESS: When did I get out of the jail?

THE COURT: Yes.

THE WITNESS: I got out of the jail next morning around 12 o'clock.

Q. After posting the bond?

A. That's right.

Q. Now, those were the events of the 29th and 30th then of November?

A. That's right.

Q. Now, after that did you make any other efforts to get halls?

A. I did, on the——

Q. I direct your attention to the 12th of December.

A. On the 12th of December I went to the Polish Community Hall on Bay and Grove Street to rent that place; I had been there before without any success and I went there in particular and they told me that they had an open date——

MR. MATTHEWS: I object to what they told him and ask that it be stricken out.

Q. Did you get a date there?

A. Yes.

Q. What was the date that you got?

A. January the 7th.

Q. Now, did you have your meeting there on the 7th of January?

A. I did not.

Q. Why not?

A. They wouldn't give us a hall.

Q. I direct your attention to the 18th of December. Did you make any effort to obtain a hall at the Jewish Center?

A. I did, I went there and saw the secretary for the rental of the place and they said they would let me know.

MR. MATTHEWS: I object to what he said.

Q. Were you able to get the hall?

A. I did not.

THE COURT: What is the name of the people up there?

THE WITNESS: I don't know the name; I didn't know the name. I only know that they were in charge.

Q. Now, did you make any attempt at the Polish Hall?
A. I did.
Q. When was that, do you remember?
A. That was on December the 20th, and I didn't get the hall there because they said that they——

MR. MATTHEWS: I object to what they said.

Q. Very well, you didn't get the hall?
A. We didn't get the hall.

MR. FRAZER: I would like to have on the record, if I may, your Honor, a general exception to the refusal to permit conversations about the hall to be testified to.

(Which exception is hereby allowed and sealed accordingly. (Sealed)

Q. Now, turning to the date of January the 26th did you have occasion on that day to see the defendant Casey?
A. On January 26th, I went to Commissioner Casey to get a permit to distribute literature and his secretary asked me who I was and I told him my name and what I represented and he asked me what I wanted to see Commissioner Casey for and I told him that I wanted to see him to get a permit for the distribution of literature, and he said "Just a minute" and I had a copy of the leaflet which was the message of President Roosevelt to Congress, and he said, "Well, just a minute." So he went inside of the office and he come back out and he said, "You can't have a permit, no permit will be granted."

MR. MATTHEWS: Might we have which message that was, was it on the State of the Union?

MR. FRAZER: It is in evidence.

A. (Continuing.) And I told him "How is it that someone, others could have permits to distribute literature, and we couldn't?" He said, "I don't know anything about it." I said, "How does it come that the Chamber of Commerce can distribute literature and we couldn't get a per-

mit?" They said, "I don't know anything about it" and I asked them about others, about Bingo, that they could distribute literature. He says, "I don't know anything about it." He says, "No permit is granted" and we didn't get a permit.

Q. Do you know, is it a fact that the Bingo and Chamber of Commerce literature had been distributed?

A. I do.

Q. Now, turning to February the first with relation to the American Home Products Company.

A. On February the first, four or five other representatives went to the American Home Products to distribute literature, the President's message to Congress and that morning we were stopped by the police officer and were not allowed to distribute any literature.

MR. MATTHEWS: I object, if your Honor please, unless he was there. Does he know that of his own knowledge?

Q. Were you there, Mr. Macri?

A. I was not there. I was there in my office.

MR. MATTHEWS: Well, then, I submit, if your Honor, please——

MR. FRAZER: Very well.

MR. MATTHEWS: —that it should be stricken out.

Q. Did you give your men when they went out that day any circulars to distribute?

A. I did.

Q. I show you one and ask you whether that is the circulars which you gave them to distribute that day?

A. That is right.

Q. Who were the men that went out that day, Mr. Macri?

A. Bob Oliver, a gentleman by the name of Zarkarich. Al Barkin, John Holley; and I don't remember if there was another one.

MR. FRAZER: I would like to offer that. Any objection?

MR. MATTHEWS: No, none at all, particularly to the President's message, me being a Democrat, and a Roosevalt Democrat, Spaulding, a hundred per cent.

(Received in evidence and marked Exhibit P-32.)

Q. Now, February fourth.

A. On February fourth I went to the People's Palace to rent the hall there, and I talked to the janitor, if the place was open, if they had any open dates, and he said they had plenty of——

MR. MATTHEWS: I object to what they said, if your Honor please.

THE COURT: Did you get the hall?

THE WITNESS: I did not get the hall.

THE COURT: Do you remember the name of that man?

THE WITNESS: Yes. The manager who I had to see was a man by the name of Mr. Saxton.

THE COURT: Saxton.

THE WITNESS: Saxton.

Q. Were there any open dates at the time you applied?

A. Mr. Saxton told me that when I mentioned——

MR. MATTHEWS: I object to the conversation as hearsay.

THE COURT: We will have Mr. Saxton.

A. Mr. Saxton wouldn't give me the hall.

Q. What about the Grand View Auditorium?

A. The Grand View Auditorium, the bartender, when I asked him if he had an opening date——

MR. MATTHEWS: I object to the converation with the bartender.

MR. FRAZER: That is what he went there for. I don't know how he can say that he went there to get halls, if he can't say he went to get halls.

THE COURT: Did you see the manager?

THE WITNESS: Yes, I saw the manager.

THE COURT: He said he saw the manager. What was the manager's name.

A. The manager was Mr. Banarducci.

THE COURT: Did you ask him for the hall?

THE WITNESS: The thing is that they had an opening date for February 28th, and when I told them that it was the CIO the bartender said, "Well, you had better see the manager," because of the fact that when I said the Committee for Industrial——

MR. MATTHEWS: I object to what the bartender said.

Q. Well, you found that they had an open date for February 28th?

A. That is right.

Q. Were you able to get it after you talked to the manager?

A. No, because he knew me, becuase I was there before.

Q. Now do you remember the events of February 10th in connection with the Consolidated Razor Company?

A. I had got a letter, an anonymous letter, saying——

MR. MATTHEWS: I object to what an anonymous letter said.

THE COURT: Well, as a result of the letter. First, what is this Consolidated Razor Company?

THE WITNESS: The Consolidated Razor Company is the plant that makes safety razor blades.

THE COURT: Yes, I gathered that, but where is it?

THE WITNESS: In Jersey City.

THE COURT: Do you know the address?

THE WITNESS: It is on Cornelison Avenue.

THE COURT: And how many people do they employ, or did they employ at this time?

THE WITNESS: They employed in the neighborhood of about 90 employees.

THE COURT: And as a result of the letter you did what?

THE WITNESS: I went down there to talk to some of the workers that night and made arrangements for them to come up to a meeting on Wednesday night, and that night the workers didn't show up, so on February 10th I went down to the plant around dinner time or lunch time to talk to some of the workers again and see why they didn't show up, and I looked in front of the plant, and there was a police officer, and while I was waiting for some of the workers to come out of the plant, I saw one young fellow that I had previously spoken to a few nights before that, and I asked him——

MR. MATTHEWS: No, I object, if your Honor please.

THE COURT: All right.

MR. MATTHEWS: —to a conversation with an unidentified person.

THE COURT: Do you know his name?

THE WITNESS: I don't know his name.

THE COURT: You know he worked there?

THE WITNESS: I know he worked there.

THE COURT: Go ahead.

A. I asked him——

MR. MATTHEWS: Your Honor, I object. Just a minute, please.

THE COURT: Wait a minute. We will se what his answer is. If it is objectionable I will strike it out.

MR. MATTHEWS: A conversation is objectionable, isn't it, your Honor?

THE COURT: Well, I can't tell at this point. Go ahead and answer.

MR. MATTHEWS: Well, any conversation with an unidentified person is so difficult for people to meet. Won't your Honor believe me?

THE COURT: If it is objectionable, I will strike it out.

MR. MATTHEWS: I ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

THE WITNESS: I asked the worker what time the workers left from the plant, and he said that "they are now eating"——

MR. MATTHEWS: I object to this conversation.

THE COURT: Well, I suppose it is irrelevant on the ground it is trivial. Tell us what happened then.

THE WITNESS: Immediately after that, two of the workers came out, out of the plant, and I started to talk to them, and as I was talking to them I saw the policeman come up towards us and as they come up, the two workers said, "These"——

MR. MATTHEWS: I object, if your Honor please, to what the workers said.

MR. FRAZER: What the workers said to the policeman.

MR. MATTHEWS: The policeman is not identified.

MR. FRAZER: It is perfectly proper.

THE COURT: Was he in uniform?

THE WITNESS: He was in uniform.

THE COURT: All right, go ahead.

THE WITNESS: The police officer came up to us——

MR. MATTHEWS: May I have an exception on the record?——

THE COURT: Yes, you may.

MR. MATTHEWS: —to this conversation between two unidentified people and an unidentified policeman?

THE COURT: You may.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

THE WITNESS: Continue?

THE COURT: Yes, go on.

THE WITNESS: When the police officer came up, why, these two fellows said to the police officer, "These two men were molesting us."

I happened to be with a fellow by the name of Nicholas Kowitski, who was along with me, and immediately the police officer——

MR. MATTHEWS: May I have that name?

THE WITNESS: Kowitski, Nicholas Kowitski.

MR. MATTHEWS: C-o-w——

THE WITNESS: K-o-w——

MR. MATTHEWS: I-t-s-k-y?

THE WITNESS: I-t-s-k-i, I think.

MR. MATTHEWS: Thank you.

THE WITNESS: So the officer said, "What are you doing here?"

And I said, "Talking to the workers."

He said to the workers, "Have you got a machine?"

The workers said, "No, we don't."

I said, "I have a machine, parking right down here, just a half a block down."

He says, "All right, come on."

So they took us in the car. These two fellows got in, and I got in, the officer got in, and then this fellow—previously, the fellow that I had spoken to, they said, these two fellows said, "That's another one, he was molesting."

He said, "Get in."

So we went up to the police station, and when we got to the police station, why, Captain Gordon came out, and the police officer was telling him what happened, and finally Captain Gordon said to me, "What's your name?" and I told him, showed him my credential, and he said to the officer, "We can't hold them for that. Let them go."

So immediately, as we went outside, I asked these workers what their names was, and they wouldn't tell me. They said, "Now, it is best for your health if you don't come down there in front of the plant."

MR. MATTHEWS: I object to this conversation with the workers with no policemen there.

THE WITNESS: The policeman was there.

MR. MATTHEWS: Well, if the policeman was there, he is still the unidentified policeman. I object again.

Your Honor can well see the system that this CIO group has in a court case here. This is to create a record in a barren case. There never was a less fertile or more barren cause than this, and this is the way these fellows have of building it up; coming along here and going on the stand, these professional agitators from all over the country, and making statements like this, that unidentified people said to an unidentified officer, "You do so and thus and so." Why, it is impossible for any American citizen in the sense of fair play to all to meet a case like this. It is barren, absolutely barren, if your Honor please, of legal justification. I don't think that conversation is even remotely admissible.

MR. FRAZER: That would be excellent matter for Sir John to put in his brief when he comes to write his brief, but this is hardly the proper time for it.

MR. MATTHEWS: That is not a subject for brief. The Dean is again off tack, and when the Dean has a bad case he goes off awfully bad. But the point is this, if your Honor pleases, that you could not brief that, please, Judge Clark, because there is no answer possible to unidentified people talking to an unidentified person.

THE COURT: Just tell us what happened.

THE WITNESS: Immediately, Mr. Kowitski and I went down to the plant to talk with the workers. No sooner I got there and parked my car, along comes Captain Gordon in his machine, and he pulls over to my car, and says, "You can't park here."

So I said, "Just a minute, until I get out of the car."

And I got out of the car and I said, "What do you mean, I can't park here?"

He says, "You can't park here."

I says, "But I have a right to park here."

"You can't park here, and you can't talk to the workers. There is no strike here, and since there is no strike, you can't talk to the workers."

"But," I said, "these workers are working under miserable conditions, and my job is to organize these workers in order to better their condition."

He says, "You can't stay here. You have got to leave."

And I told him about our Constitutional rights that we have a right under the Constitution to peaceful assembly, free speech and freedom of the press.

He said, "I don't care about the Constitution. Don't preach Constitution to me, because I go by Vice-Chancellor Berry's decision. Vice-Chancellor Berry's decision says that when there isn't any strike in a plant you can't picket and you can't picket here, and you can't talk to these workers."

And I asked him, I says, "Does Vice-Chancellor Berry's decision supersede the Constitution?"

And he got riled up and he said, "Now, don't preach the Constitution."

So finally, after I maintained my constitutional right, I finally walked away and said, "All right," and that ended it.

Q. Now did you have any occasion on that day to go down to the American Home Products?

A. I did; talking to the workers in front of the plant when they come out, and every day that I went down to talk to the workers, why, this Detective Fitzgerald would be following me, either going down or up, and he would stick his head out of the window to hear what I was saying to the workers, and I was telling the workers that——

Mr. Matthews: No, I object to what he was telling the workers.

Mr. Frazer: In Fitzgerald's presence.

MR. MATTHEWS: Sticking his head out of the window, he said.

MR. FRAZER: Yes, so that he could listen.

MR. MATTHEWS: Oh, well——

THE COURT: There is no secret about what he was telling the workers. You were attempting to organize the workers, weren't you?

THE WITNESS: That is right, that is right.

MR. MATTHEWS: Well, if your Honor please, with due respect to the Court——

THE COURT: I mean is there any secret about it? He has said so many times.

MR. MATTHEWS: There is much secret about it, very much secret about it. You can see by this man's testimony that there is much secret about it.

THE COURT: Well, there is no secret on my part.

MR. MATTHEWS: The point is this, if your Honor pleases: one of the galeties of nations is a CIO circular with Roosevelt's message on it. Now, there is no secret to Roosevelt's message, but the organization of this crowd is carried on, if your Honor pleases, along, we will call it. Here is an Allenjonian come into Jersey City, and even when he is told by workers from a plant, "Don't molest us," he still persists in molesting them, and when he is brought to the police station on the complaint of the workers and is let go, he still goes around doing the same thing. Now, I want to put in this record——

THE COURT: This is another plant now.

MR. MATTHEWS: I know, but the same day, going about like a universal pest.

THE COURT: Well, really, Mr. Matthews, you cannot characterize labor organizers as either agitators or pests, no matter what labor organization they belong to.

MR. MATTHEWS: Well, your Honor, in your judicial capacity, of course must sit there coolly and calmly, and as you do, dispassionately judge them, and of course that should be our duty too, but one can't listen to the itinerary of this fellow and conclude that he is burned up with constitutional rights.

MR. FRAZER: If Sir John could control his irascibility we could save a great deal of time.

MR. MATTHEWS: I have objected to the conversation because it is hearsay.

THE COURT: Yes, go on, don't tell us the conversation.

MR. MATTHEWS: Your Honor will allow me an exception because——

THE COURT: I won't allow you an exception to a ruling in your favor.

MR. MATTHEWS: Oh, I didn't hear it, I am sorry. That is twice now this afternoon.

Q. What happened?

A. The thing was that the detective was always following me around and of course scaring the workers——

MR. MATTHEWS: I object and ask that it be stricken out, scaring the workers.

THE COURT: Yes, that is a conclusion. Strike it.

A. (Continuing.) That same night I went down to the Consolidated Razor Company to talk to the workers again. I found out that these two workers who at dinnertime didn't want organization were foremens, bosses of the plant.

MR. MATTHEWS: I object and ask that it be stricken out because that is hearsay.

THE COURT: Well, did you get their names, Mr. Macri?

THE WITNESS: I didn't get their names; they wouldn't give me their names.

THE COURT: How did you find it out?

THE WITNESS: I found out through the lady who happens to be the landlord or supervises the building.

MR. MATTHEWS: I ask that that be stricken out.

THE COURT: Can she identify them?

THE WITNESS: Sure, she can identify them.

MR. MATTHEWS: I ask that it be stricken out.

THE COURT: It will be stricken out.

MR. MATTHEWS: Thank you.

Q. This was all on February 10th, wasn't it? Now, February 14th did you see Chief of Police Walsh?
A. On February 14th——

MR. MATTHEWS: Pardon me, your Honor, please. Do I understand that the bill was filed on January 3d, was it?

MR. FRAZER: Somewhere about that.

MR. MATTHEWS: How is this testimony competent, if your Honor please?

MR. FRAZER: That has been all gone into so many times, Sir John, before you came into the case.

THE COURT: Yes, that has been ruled on but you may have another exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: My objection is place for this reason, that this testimony volunteered now is the testimony of this organizer as to things that he did after the bill was filed.

THE COURT: I permitted an amendment and I permitted an exception to the amendment.

MR. MATTHEWS: Amendment? Is there an amendment to the bill?

THE COURT: Yes.

MR. MATTHEWS: Pardon me a minute. May I confer with Mr. O'Mara because I thought he told me at noon there was none.

Are you sure there is an amendment?

THE COURT: I didn't say in writing, I said I permitted counsel to amend.

MR. MATTHEWS: But until the amendment—I am surprised; I haven't answered the amendment.

MR. FRAZER: They have been surprised for the last two weeks.

MR. MATTHEWS: But I mean I am surprised to death.

MR. FRAZER: But you are so late in the case.

MR. MATTHEWS: I think my lateness has been compensated for, don't you?

THE COURT: I have allowed an exception so that you are adequately protected.

MR. MATTHEWS: I am not adequately protected, Judge Clark. Let's look the thing straight in the face, because the record is as important as the trial. Here is testimony being offered that has to do with matters entirely subsequent to the filing of the bill. It could be done, as Ed O'Mara and I discussed, in an amendment to the complaint. An amendment has not been had, I am not apprised of it, your Honor; I don't know the facts alleged. I have no way of meeting it either on cross-examination of this witness or other-

wise. Now, in fairness to me don't you think, as the rules of pleading dictate, that I should have a copy of that amendment?

THE COURT: I thought it had already been filed.

MR. MATTHEWS: Judge, I had a conference this noon——

THE COURT: No, you must be right about that.

MR. FRAZER: No, it has not been filed.

THE COURT: It should be filed, Dean Frazer.

MR. MATTHEWS: Well, it is the fag-end of the day. Maybe they can give it to me in writing, I will accept it in writing now and we can continue on afterward.

MR. FRAZER: I thought we were following the quite usual equity practice where the Court says "I will permit an amendment to cover this" and the case goes on with the trial without any formal filing of amendment.

THE COURT: But it should be filed, Dean Frazer.

MR. MATTHEWS: More than that. Much as I hate to be quarreling with my dean on this, but the ordinary equity practice must not be followed except equity is done. Now, equity will only be done here if I am apprised what that amendment is, and I can deny it. I am even willing to waive the denial for the time being but I should have in black and white what that amendment is.

THE COURT: Do you want to continue, Dean, with this witness in the morning or are you going to withdraw him for another witness?

MR. FRAZER: No, I expected to finish him up, I didn't expect there would be so many interruptions of counsel. The examination is relatively short.

THE COURT: But the rulings of the Court would indicate my interruptions were well put, but I will have a little time with the gentleman myself.

THE COURT: That is what I thought. So that you had better make the necessary arrangements so that there won't be any confusion in the morning.

MR. FRAZER: But let us go right ahead with the case.

MR. MATTHEWS: If you don't ask any questions within the purview of the amendment.

MR. FRAZER: Oh, no, we have just been served with a subpœna by the defendant, they have waived any amendment. They have gone into the whole matter. We have a most remarkable subpœna here which asks us to bring over the whole of the office of the CIO.

MR. MATTHEWS: I would dispense with a certain amount of it if I had made out the subpœna.

MR. FRAZER: Well, I never have seen such an impertinent subpœna. We are asked to bring all—or Mr. Carney is asked to bring all of the books, papers, records of the Committee for Industrial Organization, commonly known and described as CIO, since the CIO has started to function in the State of New Jersey, including all minutes kept, orders or bulletins issued, and the names and addresses of officers thereof, and also "bring with you books of account and roster of membership of the said CIO, its subordinate organizations or affiliates: Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America and United Rubber Workers of America." That means that we are to bring the office over, and if they would let us know what relevant material they want from our files that would be one thing, but we certainly cannot be asked to bring

our office to this court room, it would be inconvenient for the Court, if for on other reason.

MR. MATTHEWS: I think they will find that office isn't so very big. That is a beautiful speech but that is our subpœna. But really most seriously so, won't you give me a right to have that amendment before me? After all, I am responsible now for what goes on in this cause. If I had that amendment, of course——

THE COURT: How long will you be with this witness, Dean Frazer?

MR. FRAZER: I have got about five or six minutes more. I am taking him chronologically.

THE COURT: Yes, I know.

MR. FRAZER: We have now passed the date that Sir John has insisted upon in January.

THE COURT: How long will you be?

MR. MATTHEWS: I think I will be a long while, I really do. I think I will be at least an hour.

THE COURT: Then you had better make the necessary arrangements on that for tomorrow. I will adjourn now until tomorrow at 10:30. Will you file the amendment, Dean Frazer?

MR. ERNST: If your Honor please, before you adjourn, this subpœna has been issued for tomorrow to a man whom we will put on the stand as our witness tomorrow morning.

THE COURT: Who, Mr. Carney?

MR. ERNST: Mr. Carney.

THE COURT: Is he the next witness following this?

MR. ERNST: Depending on how soon we get finished.

THE COURT: But does he follow this witness?

MR. FRAZER: No, we propose to have the Mayor on tomorrow; because of this delay we will probably not have the Mayor on until 11:30, depending in turn upon Mr. Matthews' length of cross-examination.

THE COURT: Yes, but you are going to follow Mr. Macri with Mayor Hague or with Mr. Carney.

MR. ERNST: It depends on the length of time that the cross-examination will take. Now, I am not concerned at the moment about that. My inquiry goes to the fact that it is a subpœna returnable tomorrow morning. I would like to find out from any one of the counsel for Mayor Hague and the City of Jersey City whether this is to be answered tomorrow morning or not.

THE COURT: The office is in Newark, isn't it?

MR. MATTHEWS: Yes, the office——

THE COURT: Obviously not, I would say.

MR. MATTHEWS: I think we will be very glad to consult the convenience of Mr. Carney and the records, and as to tomorrow we will say you don't need it to appear, but may the virtue of the subpœna last for 24 hours, particularly the duces tecum part.

MR. ERNST: Now, if your Honor please, we might as well clean up the question of subpœna here because we had a lot of trouble with subpœnas on the terms. We subpœnaed specifically certain permits or letters in regard to permit denials or applications. We were told that they would clean out tremendous numbers of documents and be equivalent to subpœnaing all the records of the Register's office. It turned out to be three little files of about 35 or 100 pages, 35 instruments. I can give you my assurance that these documents are fabulous are in size, that they are not obtainable at all by this witness to a great extent, that we will never answer a subpœna giving the names of the CIO membership

in a town which has treated them as they have according to the evidence. Now, I should imagine that there ought to be a discussion some time before this subpœna is returned as to the proper limits of these vague weasel words. Don't let's waste two days again on defining the terms of a subpœna.

MR. MATTHEWS: That statement by counsel is an affront to everybody. "We won't do it." "We won't do it."

MR. ERNST: We will not.

MR. MATTHEWS: You will do it under the order of the court, you will produce your records of the names of your CIO in New Jersey and in Jersey City.

MR. ERNST: Well, I just say we won't, because I know the law on the subject.

THE COURT: Anyway it needn't be made returnable tomorrow. I think it may have to be argued at some length.

MR. ERNST: Similarly with other subpœnas issued in similar blanket terms for the entire files of organizations, not only up to the date of the service of the petition, mind you—this subpœna, I should imagine, would seal the mouth of the defendant on his point as to the evidence running up to date, because he doesn't even in the subpœna say material up to the date of the service; the subpœna is without limit, runs back for years, three years maybe, up to today, I take it, because there is no limitation contained in it.

THE COURT: Have other subpœnas been served?

MR. ERNST: Yes, for whole office files.

MR. MATTHEWS: Yes, we want them.

MR. ERNST: Without specification as to what kind of material.

MR. MATTHEWS: They are very definitely specified.

THE COURT: Maybe tomorrow we had better set aside a day for subpœna day.

MR. ERNST: Thank you.

MR. MATTHEWS: But we want those records.

(At this point an adjournment was taken to Friday, June 10, 1938, at 10:30 A. M.)

Friday, June 10, 1938.

Case continued.

Appearances as before.

MR. FRAZER: I wish to file the amendment by way of supplement to the bill of complaint, sir.

MR. MATTHEWS: May I have a copy, Spaulding?

MR. FRAZER: I have one for you.

MR. MATTHEWS: May we look at it a moment, your Honor? Your Honor, please, without specification of facts, this amendment will be worthless. It apprises us of nothing. It asks that they be allowed to amend by saying "After the filing of the bill of complaint defendants, Frank Hague, Daniel J. Casey, Harry Walsh, the Board of Commissioner of Jersey City and their employees, agents and servants, continued and are still continuing, against plaintiffs and others similarly situated, the practices, activities, plan and conspiracy referred to in paragraphs 8 to 20 inclusive of the original bill of complaint herein, in violation of the Constitution of the United States and the other statutes and laws referred to in the bill of complaint."

That is simply a general allegation, an omnibus allegation, and not an amendment in any sense of the

word; and if your Honor should construe it as such, I now ask for a bill of particulars. I can't answer it if I don't. They can bring in anything.

THE COURT: It may be filed.

THE CLERK: I have filed it.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.) (Seal)

MR. MATTHEWS: May I make clear to your Honor, and may I make it clear for the record, that this is not an amendment; this is a subterfuge; and that I am entitled to a bill of particulars.

THE COURT: I wish, Mr. Matthews, you wouldn't use words so hard, like subterfuge.

MR. MATTHEWS: Pardon me, your Honor.

THE COURT: I say don't use uncomplimentary terms. Subterfuge is an——

MR. MATTHEWS: That is what I mean. There is no English word that can be used as a synonym for it. It is a subterfuge to lug in what is not pertinent to this issue, with respect to the Court. How will they understand me above if I call it by a name that does not mean what I meant. It is a subterfuge in the sense of something that is put in underneath, in order to deceive, and to allow a latitude that is unwarranted in a pleading.

This, your Honor, goes to the very essence——

THE COURT: It simply brings the bill of complaint down to date, that is all it does, as I read it.

MR. MATTHEWS: It brings it down to date by saying that in many other places the same, if your Honor please; that is all it says. It says from paragraphs 8 to 20 inclusive. It doesn't give us a single act.

THE COURT: If there was an attempt to introduce some evidence that has no connection with the paragraphs of the bill as originally written, then it would seem to me that your contention would be well taken, but as it is, I don't believe it is.

I have given you your exception.

MR. MATTHEWS: Well, now, at this time, if your Honor pleases, it becomes necessary that a reply be made, or an answer, to that omnibus amendment; do I understand that we have time, we were just served with it, to answer that amendment, and your Honor will consider it filed as of time?

THE COURT: Certainly, of course.

MR. MATTHEWS: Thank you.

MR. ERNST: Your Honor please, I would like to make a statement in regard to a purported service of a subpœna on Harry F. Ward. Mr. Ward has explained to me the circumstances of the alleged service of the subpœna. I want to make it clear I do not in any way charge the improprieties of the service against Mr. Hamill, corporation counsel; but I have advised Mr. Ward that he need not come into court in answer to the subpœna. I want to say to the Court, however, that at any time Mr. Hamill and counsel for the defendants desire Harry Ward, the president of the American Civil Liberties Union, he will be made available either for service of subpœna or on telephone call, withor

MR. HAMILL: I think that ought to go for all of the men of prominence who have, as we know, business of importance to attend to. There isn't any use of bringing them here merely to make up or add to the audience, and that is satisfactory to us, and I don't think there ought to be any difficulty about that with regard to other men, whoever they may be, who are under subpœna.

MR. ERNST: Thank you.

MR. FRAZER: Mr. Macri, will you take the stand.

SAMUEL MACRI, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. I think yesterday afternoon we finished with the events of February the 10th, Consolidated Razor Company——

A. That's right.

Q. —and we were about to go to the events of February 14th as our visit to Police Chief Walsh.

A. Right.

Q. Will you resume your narrative from there?

MR. MATTHEWS: I want to object to this testimony as not relevant to this issue.

THE COURT: I gave you an exception, I think, last night.

MR. MATTHEWS: Yes, but I must have the exception now the new amendment is here.

THE COURT: I will give it to you now.

MR. MATTHEWS: Thank you.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Will you proceed, Mr. Macri?

A. Mr. Nicholas Kowitski and myself went to Chief of Police Walsh to get a permit for a CIO parade in Jersey City, for a CIO show that we was holding here in Newark at the Mosque Theatre. So when I talked to Mr. Walsh and asked him for a permit he said what did we want the permit for, and I said, "For the show people to come in through Jersey City on a parade." He asked me if I was

going to have banners on the trucks and cards and placards and I said, "Yes." Well, he said he didn't know and for me to come around next morning and he would give me a report, and I asked him if eleven o'clock was all right and he said eleven o'clock would be a good time.

Q. Now, did you do anything else that day after seeing Walsh?

A. I went to the Hudson County Turn Hall to rent that hall for a mass meeting and I didn't get the place when I mentioned the CIO.

THE COURT: Can you give the name of that manager?

THE WITNESS: The manager's name is Richard Link. I had been there previously trying to get the place.

Q. Now, did you go back the next day at eleven o'clock to see Chief Walsh?

A. Next day I went to see Chief Walsh and I went myself and when he admitted me into his room I asked him if he would give me a permit for the parade and Mr. Walsh looked at a blue book and started to read something about an ordinance and said no permit would be granted, and I asked him the reason why. He says, "No permit will be granted," and I asked him for a copy of the ordinance and he said, "Go and see the City Clerk." So seeing that I didn't get the permit I was ready to leave when he started to talk to me why didn't I be a decent fellow and he said, "You are always getting newspaper reporters and photographers to come in here and our police department is decent people." Then he accused me of posing for a picture in the "Life" magazine, and I said that I wanted to see the magazine and after he showed it to me I said, "It is a very good picture," and he said, "You posed for that picture," and I didn't say that I posed or didn't pose for it. Then I said to Chief of Police Walsh, I said, "Isn't this your office," pointing out of the picture where his

telephones were taken and also I pointed out to him the police department that had their picture there and I also pointed out to him the cathedral or the church that was an altar of $50,000 that was donated and his mansion in Deal, New Jersey. He says, "That's right, that's right." And then he came to the picture of the slum section and then he accused me of having Margaret Burke-White to come in there and take those pictures, and I said that I had nothing to do with Margaret Burke-White in taking the picture.

MR. MATTHEWS: I want to object at this point. This is all irrelevant to this issue.

MR. FRAZER: It is very important and very relevant.

THE COURT: It is the Chief of Police.

You may answer.

MR. MATTHEWS: Your Honor will allow me an exception?

THE COURT: Yes.

MR. MATTHEWS: On the ground that this is simply an attempt to introduce some extraneous facts that are not pertinent to this case; therefore irrelevant.

(Which exception was duly allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

Q. Go ahead?

MR. MATTHEWS: I have the exception, your Honor, on the record?

THE COURT: Yes, you have.

MR. MATTHEWS: I have been reading the record and there are four exceptions that I want to take up with your Honor that are not in the record. I have read it

carefully and made a note of every one of my exceptions; and I have it understood that there is an exception granted, please, in this instance?

THE COURT: You mean that the stenographer didn't get it?

MR. MATTHEWS: Maybe so, maybe it is no fault of either yourself or mine or the stenographer's, but I have made a note; the application for the exception was granted, but the exception is not sealed in the record.

THE COURT: Well, Mrs. Bergen is usually very meticulous about those things.

MR. FRAZER: I might say that an exception is hardly necessary in an equity proceeding. If your objection is upon the record, I think that is sufficient.

THE COURT: I think so. You know perfectly well, Mr. Matthews, that I would never be technical; I would never be technical.

MR. MATTHEWS: The Dean, you know, is not a dean of teaching. He is just a dean of presiding. I don't want to take my law from him, he is wrong too often. I will ask for an exception.

THE COURT: I understood he considered you one of his star pupils, Mr. Matthews.

MR. MATTHEWS: I can't hear you, your Honor.

THE COURT: I said I understood that he considered you one of his star pupils.

MR. MATTHEWS: I never studied under the Dean, thanks be to God. The Dean is about contemporaneous with me in years. I was once a teacher in the law school, but when it became the Newark University I resigned.

THE COURT: When he became dean, you resigned?

MR. MATTHEWS: No, he was dean—I helped him to become dean under the new set-up, if you want to know. There was very great difficulty about it. We had to drop somebody else. I, as one of the trustees, did my best for him. I thought Spaulding needed that job.

THE COURT: You now agree that it was an error, though?

MR. MATTHEWS: No, I wouldn't say that, not an error, Judge, so long as we want to continue it. I would say that it was great boon for Spaulding. The public will have to determine the value to them.

I have an exception?

THE COURT: Yes.

MR. FRAZER: After these gracious remarks, may the witness proceed?

THE COURT: Well, I fomented those remarks. Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. So when I had told him that I didn't have Margaret Burke-White to take the picture, he accused me of having Margaret Burke-White to take the picture, and it was getting pretty hot, and I thought it was about time to leave, since I didn't get the permit, and I was ready to leave for the door and he run around the desk and he stood right in front of the door and nailed me by the lapel of the coat, and started to push me around. Then he started to mumble, I don't recall just exactly what he said, and I left to go out, and the last thing he said, he said, "There isn't a decent hair on your head," and I told him, I said, "Now, I came here for a permit," and I left the place, and I didn't get the permit.

Q. Now will you turn to the events of March 24th with relation to the United States Gypsum Company.

A. On March 24th——

MR. MATTHEWS: The same objection, if your Honor please.

THE COURT: Yes, I have given you an exception.

MR. MATTHEWS: And I can save time by saying that in any testimony from this point on of dates after the bill of complaint, your Honor will allow me an exception?

THE COURT: Yes.

MR. MATTHEWS: To the testimony?

THE COURT: I have already allowed Mr. Hamill an exception under the same circumstances.

MR. MATTHEWS: I thought that was continuing.

MR. HAMILL: I didn't hear your Honor.

THE COURT: I said I had allowed you an exception to the same line of testimony from the witnesses.

MR. HAMILL: Oh, yes.

Q. Will you go ahead, Mr. Macri?
A. On March the 24th I went to——

THE COURT: Mr. Macri, first tell us, as I have asked you before, what the United States Gypsum Company is and where it has a plant and how many people worked there.

THE WITNESS: It is located in Jersey City on Henderson Street, at the foot of Henderson Street. What it actually makes I am not in a position to state at the present time, because I was in the midst of organizing those workers, and I was attempting to talk with those workers that date. So I didn't get the full particulars, just exactly what they produced. So I talked——

THE COURT: How many workmen?

THE WITNESS: Well, when they work full, they employ in the neighborhood between three and four hundred people.

THE COURT: All right.

—So I went to talk to one of the workers that I had a contact that they gave me his name as being one of the former officers of the organization, who happened to be the leader, and after I got done talking Mr. Nicholas——

THE COURT: Give us the name of that organization, will you?

THE WITNESS: They did belong to the American Federation of Labor at one time but they had broken away.

MR. MATTHEWS: I cannot hear the witness.

MR. FRAZER: Might I ask that counsel sit a little away from this table? We have conferences we wish to carry on, once in a while.

MR. MATTHEWS: I will never eavesdrop on your conferences, but when anybody uses the language that Ernst did yesterday I will repeat it to the Court.

A. (Continuing.) So after I got done talking to the worker I left the plant to go to my car and when I got to my car, which was near Grand Street on Henderson Street, I no sooner got in the car than a cruiser car pulled up and said——

MR. MATTHEWS: I object, if your Honor please, no identification of this person.

A. Yes, I have the number.

THE COURT: No, you must not——

A cruiser car, what do you mean by a cruiser car?

A. I mean the police car. I have the badge number of the two officers.

THE COURT: Read it, give it to us.

A. One of them was No. 17, another one was 829, and they said "Get out." So we got out. "Let me see your driver's license. What are you doing here?" I showed him

my credential as CIO organizer; they searched me, they searched Nicholas Kowitski who was along with me, and they made me open up the back of the car and they looked through the car to see if there was anything in it; after they got done searching they said "All right" and left me go.

Q. Did you have any other experience later at the United States Gypsum Company?

A. I did. On May 12th I went down there to talk to the same workers again and to distribute some of the CIO news, and while I was parked there to wait for the fellow that is supposed to come out, 4:30, one of the officers, which I haven't got his name, who was directing traffic, come over to me and knocked at the window and said——

MR. MATTHEWS: I object, if your Honor please, anything that was done or said by an unidentified person.

THE COURT: Was he in uniform?

THE WITNESS: He was in uniform.

THE COURT: Was he at a certain specific crossing?

THE WITNESS: Yes.

MR. MATTHEWS: I still object, that he is an unidentified person.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) He come over and he said, "What are you doing here?" I showed him my driver's license. He said, "I didn't ask you for your driver's license." Then I took out my credential and showed it to him and he says, "What are you doing here?" I said, "I am going to talk to these workers." So he took my driver's license and credential and he started to walk away, and I said, "Wait a minute, Officer, let me have my credentials again." "Never mind, stay where you are." So I waited and about five or

ten minutes later he come back and he said, "Here you are, Mr. Macri, here is your cards" and he walked away.

Q. Mr. Macri, what has been the effect of this action of the police upon your organizational efforts?

A. It has hampered a whole lot the organization drive of organizing the unorganized workers in Jersey City because of the fear of the police watching our headquarters and also when it was in front of the American Home Products that this Fitzgerald would be walking or driving his car up and down and these workers saw the detective at all times and also the police that were stationed in front of the plant, that the workers were ascared to come to the office.

MR. MATTHEWS: Now, I ask that that be stricken out, that the workers were ascared to come to the office. That is a conclusion.

THE COURT: Yes.

Q. How about its effect upon your circular distribution?

A. What was that, Counselor?

Q. The effect of police interference upon your circular distribution.

A. The effect was that the workers wouldn't accept the circulars on fear of the detectives that was there because we had gotten a report that it was being carried back to the employer.

MR. MATTHEWS: I object, if your Honor please, as a conclusion and hearsay evidence.

THE COURT: Yes.

MR. MATTHEWS: I ask that it be stricken out.

THE COURT: Yes.

Q. They wouldn't receive them?

MR. MATTHEWS: Pardon be, your Honor please. His Honor had ruled on that. I asked that it be stricken. I thought his Honor had ruled on it.

MR. FRAZER: I was merely referring to the part that I understood his Honor had not stricken.

THE COURT: You cannot give—just the act, whether he refused to receive them or not, not their mental state.

Q. Now, Mr. Macri, do you remember the occasion when Representative O'Connell said that he was coming to Jersey City the second time?

A. Yes.

Q. That was at Pershing——

A. Pershing Field.

Q. —Field?

A. That's right.

Q. What date was that?

A. On May 27th.

Q. And were you at Pershing Field that evening?

A. I was.

Q. Will you state what you saw and what happened there?

A. I got to Pershing Field around seven o'clock thereabouts and there was an assemblage there of about in the neighborhood of four or five thousand people, the people were very friendly, I talked to a number of them, and around about half-past seven I saw an army of police officers marching——

MR. MATTHEWS: I object to the word "army", your Honor please.

THE COURT: I think that is a conclusion. The number.

Q. How many officers in your opinion constitute an army?

A. Well, I couldn't say. I should say that there was plenty of them, maybe four or five hundred.

THE COURT: I think Commissioner Casey said five hundred, didn't he? I think he said that.

MR. FRAZER: The witness' estimate is fairly accurate then.

MR. MATTHEWS: Of a regiment.

A. (Continuing.) Four or five hundred. They came to the——

THE COURT: A battalion; in the military sense, about a battalion.

MR. MATTHEWS: Corporal's guard.

A. (Continuing.) And each entrance to the Pershing Field was guarded by police officers numbering anywhere from eight to ten in some places, more in some places, maybe less, and in the middle of the field, the Pershing Field, they had police officers strung clear across the field, which is, I believe, about two blocks long. The officers were stationed maybe a foot apart, and when Jerry O'Connell came in around eight o'clock I happened to be maybe probably—I couldn't just exactly say the distance—maybe a hundred feet, maybe less, when I saw Jerry O'Connell going in, and then the mob and the people pushing them back out again. So after they had escorted O'Connell out of the place, out of the Pershing Field, I called up Carney and told him it looked like the thing was over, that Jerry O'Connell wouldn't be able to speak. I started to go back in the field and talk to Bob Harker and Nancy Cox; I was talking to them about the great number of people was there and also that it was obvious——

MR. MATTHEWS: I object to this conversation.

THE COURT: Yes, don't give your conclusions.

Q. Well, you saw Harker and Miss Cox, did you?

A. That's right.

Q. And did you remain with them?

A. No, after I got done talking to them, I left them and someone slugged me from behind after that and I didn't remember a thing; I was sent to the hospital.

Q. What was the next thing you remember?

A. How do you mean, Counselor?

Q. Well, how long before you knew anything further?

A. I didn't know just exactly how it happened, how I got to the hospital, until late Saturday night or the next day. On Sunday I was still groggy—I didn't know just exactly what took place until I was talking to the rest of the workers, the rest of the people that was over there, and I tried to get from them just exactly what happened.

MR. FRAZER: Cross-examine, Sir John.

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Where do you live?

A. 78 Court Street, Newark.

Q. Who owns the premises at 78 Court Street, Newark?

MR. FRAZER: I object as immaterial.

MR. MATTHEWS: Very material; everything is material concerning the antecedents, whereabouts, origins, and so forth, of this man. We hope to connect him with the allegations of defense in this case.

THE COURT: Mr. Matthews, I think perhaps it is relevant what his economic or political beliefs might be, but I can't see that his personal affairs can be of any interest.

MR. MATTHEWS: Why, where he resides and who the proprietor of that place is, and the kind of place it is is very material. Now, Judge Clark, please, sir, may I urge upon you that I be given the latitude in cross-examination of this witness that he was given in telling his story on the stand? Now, I seek to find out who owns the premises where he lives to test his credibility.

THE COURT: Well, you don't think that that is a test, do you, Mr. Matthews?

MR. MATTHEWS: Certainly. It might produce evidence here that he doesn't reside there, as I only laterally in my own court——

MR. FRAZER: This witness——

MR. MATTHEWS: May I finish my argument—when a man insisted that he resided there, and I allowed the attorney to go into the ownership of the place. I was able to find, or the attorney was, that there was no such residence and as a matter of fact, since residence was jurisdictional in that case, I dismissed the case.

But the point is this: it is very pertinent, very relevant. It tests his credibility.

MR. FRAZER: The witness has already stated where he lived, so that purpose of credibility has been complied with.

THE COURT: Well, I will follow Judge Matthews and allow him to answer.

MR. MATTHEWS: Thanks.

THE COURT: But understand, Mr. Matthews, that his personal affairs are not to be gone into—with no witness.

MR. MATTHEWS: His personal affairs only insofar as they would affect the issues in this cause, that is all.

A. I don't know who owns the place. I only know that there is a superintendent there and his wife.

Q. What's his name?

A. I don't know his name. I never inquired.

Q. What?

A. I never inquired.

Q. To whom do you pay your rent?

A. I pay it to the superintendent or his wife.

Q. Do they live in the premises?

A. They do.

Q. Does Carney live there, too?

A. He does not.
Q. When did you come to that residence?
A. It might have been some time in January.
Q. 1938?
A. That's right.

THE COURT: Where did you live before that?

THE WITNESS: At Hotel Douglas.

Q. And how long did you live there?
A. Ever since May 13 of 1937.
Q. And where did you live before that?

MR. FRAZER: I object; long before any of the matters in this proceeding. He is not going to take him all the way back to Italy now, I hope.

MR. MATTHEWS: This man comes from out of the State of New Jersey in here——

THE COURT: Tell us where you lived. Sharon, you said, I believe, didn't you?

THE WITNESS: No, Allentown.

THE COURT: Allentown?

THE WITNESS: Allentown, Pennsylvania.

THE COURT: Yes.

MR. MATTHEWS: I want to find out where he lived in this vicinity after he came from Allentown. Now I am progressing back. I have arrived at the point of where he was at the Hotel Douglas for some time. Now my next question is:

Q. Where did you live before that?
A. (No answer.)

THE COURT: Was it in New Jersey, Mr. Marci?

A. You mean before I came to Newark?
Q. The Hotel Douglas.

THE COURT: The Hotel Douglas, yes.

A. I came from Pennsylvania; Allentown, Pennsylvania.

Q. All right. Now when did you come from Allentown, Pennsylvania?

A. May 13th.

MR. FRAZER: He said so a moment ago.

THE COURT: That's in the record already.

MR. MATTHEWS: May I not have my cross-examination——

THE COURT: I say I think that is in the record already.

MR. MATTHEWS: Whether it is or not——

MR. FRAZER: This is only delaying the case.

MR. MATTHEWS: You left your manners in the office, I think.

Q. Do you know Jimmy O'Donnell?

A. Who is that?

Q. Do you know Jimmy O'Donnell?

A. James O'Donnell?

Q. Yes.

A. Will you tell me what he does?

Q. Do you know a James O'Donnell?

A. Here in Newark?

Q. Do you know a James O'Donnell, from any place?

MR. FRAZER: I think the gentleman should be identified in some way.

MR. MATTHEWS: He may answer me whether he knows a James O'Donnell from any place.

THE COURT: He may know several.

MR. MATTHEWS: Well, he can tell me that.

THE COURT: Do you know more than one?

A. I know a James O'Donnell in Allentown.

Q. All right. How long have you known James O'Donnell of Allentown?

A. About two years.

Q. How long, Sir?

A. About two years.

Q. Two years. What is James O'Donnell's business?

MR. FRAZER: I object. Now this has absolutely nothing to do with credibility; it has nothing to do with any portion of my examination; it is a mere beclouding of the issue.

THE COURT: You will have to state your purpose, Mr. Matthews.

MR. MATTHEWS: What is that?

THE COURT: You will have to state the purpose of that question.

MR. MATTHEWS: The purpose is to show his connection with O'Donnell in a matter which is for him to testify to, because if he denies it I will confront him with the facts. Now I cannot reveal any further than that.

MR. FRAZER: Well, if he wishes to call him as his witness and to prove what he knows about O'Donnell, that's another matter; but I don't understand that one can set up windmills and then knock them down if they have no relevancy to test credibility.

MR. MATTHEWS: I stopped following Spaulding long ago, your Honor, but the proposition is this: that I have a right to search this witness, who is a plaintiff in the case, and is offered at this time as a witness to all of the allegations in the complaint. I have a very great purpose in this, and I think the witness will realize it even now, sir, as I start to question him, and to

foreclose me at this time to show his connection with people that we in defense say are behind this thing would be a grave injustice to these defendants.

THE COURT: You may answer.

A. What is the question.

Q. (Pending question read by the reporter.)

A. James O'Donnell worked in the silk mill at Dougherty and Wadsworth in Allentown, and he was the chairman of that shop.

Q. Do you know Joe Cunningham?

A. I don't know of a Joe Cuningham.

Q. Don't you know Joe Cunningham, a former Boston newspaper man?

A. Not that I know of, by name.

Q. Did you run a benefit for the strikers during the silk strike in Allentown?

MR. FRAZER: Now, I object. I think is going a long, long way on cross-examination. I see nothing in my examination: I see nothing on the basis of credibility that permits it.

THE COURT: What is the purpose of this?

MR. MATTHEWS: Your Honor.——

THE COURT: Is there anything discreditable in in that?

MR. MATTHEWS: I will show your Honor in the next few questions.

THE COURT: You may answer.

A. I don't know what the Counsellor means by benefit.

Q. Well, did you run something for which you charged admission, the proceeds of which were to go to the strikers?

MR. FRAZER: You mean this witness ran?

MR. MATTHEWS: "You" generally means the person to whom you are talking, the second person: are you, he, she or it.

Q. Go ahead.

MR. FRAZER: Now, may I ask the relevancy of that?

THE COURT: To show that Mr. Matthews knew how to parse, I suppose.

You may answer that.

A. I don't recall of ever running a benefit.

Q. Did you run any affair at all during that strike in Allentown?

A. We had dances.

Q. Yes.

A. In order to raise up a fund for the strikers, yes.

Q. Was O'Donnell interested with you in those benefits or dances or affairs to raise up funds?

MR. FRAZER: I object. I object to this whole line of testimony, sir, as irrelevant. Let O'Donnell come in here, of he wishes O'Donnell.

MR. MATTHEWS: Be patient, it is not our case yet. Mr. O'Donnell will be here.

MR. FRAZER: Well, you are not primarily proving your case, I take it, on cross-examination?

MR. MATTHEWS: No, that is why O'Donnell isn't here now.

THE COURT: Well, there seems to be, am I correct in saying so, some discreditable inference.

MR. MATTHEWS: An inference which would indicate that this witness' credibility must be taken——

THE COURT: I will let him answer. You may answer.

THE WITNESS: Your Honor, I see what the counsel is driving at, of a James O'Donnell, where I knew of two James O'Donnells: one was a chairman of the shop and the one he has reference to is another James O'Donnell.

THE COURT: I thought so.

THE WITNESS: I want to make that clear.

Q. Where does that James O'Donnell live?

A. He did live on Turner Street.

Q. In Allentown?

A. In Allentown.

Q. Now was he the one that was interested with you in the strike benefits or dances or whatever you want to call them?

A. He ran an affair to raise money for the strikers' benefit.

Q. And what was the name of the concern that you were conducting the strike for,—if I don't use the right term, please correct me,—or leading the strike for, what was the name of the concern, what textile concern was it?

A. United Textile Workers of America.

Q. But what was the name of the shop in which you worked that was out on strike?

THE COURT: Manufacturer, you mean, don't you?

MR. MATTHEWS: Yes, your Honor.

A. You mean the place that I worked?

Q. Yes.

A. I worked in the Phoenix Silk Company at that time.

Q. Was that the company that was on strike?

A. That's right.

Q. Were those the strikers for whom the dances and benefits were had?

A. There was a general strike they had for all the workers.

Q. In Allentown?

A. That's right.

Q. Now that you recall O'Donnell and that you see what I am driving at, as you say, does that refresh your recollection as to Cunningham?

A. I don't know the Cunningham that you have reference to.

Q. Did you ever know a Joe Cunningham, Mr. Macri?

A. I knew a Cunningham but he was a foreman in one of the shops, Jim Cunningham.

Q. Jim?

A. But I never knew him to be a newspaper man.

Q. Now, do you recall Mr. O'Donnell and Mr. Cunningham——

THE COURT: Which one now, the newspaper man or the foreman?

Q. Strike out Mr. Cunningham, he has not identified him. Do you recall Mr. O'Donnell and another coming to you with a cancelled check that you had received as your cut from the benefit?

A. That is a lie.

Q. Just answer yes or no now. Do you recall that?

A. I never got any money for any benefits.

Q. Now answer yes or no. Do you recall O'Donnell coming to you with a check which you had received and which had been paid out of the funds for the benefits for the strikers in Allentown in this strike?

A. Never received the check.

Q. You don't recall it?

A. Never received the check.

Q. Did you ever receive any money?

A. No, I didn't receive any money.

Q. Were you the treasurer of the funds?

A. I was not.

Q. Who was?

A. Elmer Kibber was the financial secretary of the Local.

Q. Who was the treasurer of the dance fund?

A. I do not recall.

Q. And do I understand you to say that O'Donnell had nothing to do with the dance fund?

MR. FRAZER: He said nothing of the sort.

MR. MATTHEWS: We will strike that out.

Q. Did O'Donnell have anything to do with the dance fund?

THE COURT: Which O'Donnell? We seem to have had two.

MR. MATTHEWS: The one he identified.

Q. Which one do you recall,—did you know whether O'Donnell had anything to do with the benefit fund?

A. James O'Donnell was put in charge to run the affair. He came in there with a proposition of raising money for the strikers. He had full charge and only to report to the strike committee, which was composed of the chairmen of all the shops which numbered in the neighborhood of between 35 and 40, the chairmen which constituted the strike committee.

Q. And that's all the connection that you had with it?

A. That's right.

Q. You never handled any of the funds or received any of them?

A. I did not.

Q. By check or by any other evidence of money?

A. I did not.

Q. All right. Do you know Catherine Hoffman?

A. I do.

Q. What is her business?

MR. FRAZER: Now, I don't know, I think there should be some statement made as to the relevancy of these questions, to go through the man's whole social life and ask whether he knows persons or doesn't know them.

MR. MATTHEWS: This isn't social.

THE COURT: State what it is.

MR. MATTHEWS: Your Honor, to state what it is ahead of time would be to forearm and forewarn this witness for my next question. Suffice it to say to the Court, I trust, the purpose of this again is to show his

connection with those elements we claim are the plaintiffs in this action.

THE COURT: So far, I don't suppose you have finished, but so far the O'Donnell episode doesn't seem to show anything.

MR. MATTHEWS: Well, if your Honor is patient there is a defense coming here.

THE COURT: I said so far. All right, go ahead, let him answer.

Q. What is her business?
A. She is the secretary.
Q. To whom?
A. Of CIO, to Mr. Carney.
Q. To Mr. Carney?
A. Yes.
Q. Where is her office?
A. 17 William Street.
Q. Is that in Newark?
A. That's right.
Q. Do you know Lena Davis?

MR. FRAZER: If counsel wishes the names and officers of the local organizing committee we will be very happy to supply it. I don't know what he is referring to now; it doesn't seem to me in any way to test this witness' credibility and certainly it has nothing to do with anything I asked on direct, and I object now strenuously to the further continuation of this type of examination.

THE COURT: You may answer.

Q. Do you know Lena Davis?
A. I don't know of no Lena Davis.
Q. You don't?
A. I don't recollect of anyone of that name.
Q. You don't. Don't know Lena Davis, never met her, is that correct?

A. I might have met her, I don't know her; if I would see her probably I would.

Q. Do you know who the state secretary of the Communist Party in New Jersey is?

MR. FRAZER: I object, that certainly is not cross-examination.

MR. MATTHEWS: This is to test the credibility of this man on Lena Davis.

THE COURT: No, I will sustain it.

MR. MATTHEWS: This is to test the credibility of this man as to whether he knows Lena Davis. I hope to show he does know her, I hope to show that there have been conferences between these people and I hope to show that she is state secretary of the Communist Party of New Jersey.

MR. FRAZER: Let us assume that all of that is true; what of it?

THE COURT: That is a matter of defense, Mr. Matthews.

MR. MATTHEWS: I don't know who this is, your Honor, but it is disturbing—Clendennin, eh—may I have your Honor's ruling because I was disturbed by that creature.

THE COURT: I sustain the objection.

MR. MATTHEWS: Your Honor will allow me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: And the purpose of the testimony was to test this man's credibility as to his knowledge of Lena Davis, that he does know her and that she is state secretary of the Communist Party in New Jersey.

THE COURT: You may offer that in defense and then I will rule on it.

Q. Are you today a member of the United Textile Workers of America?

A. Yes, the United Textile Workers of America were taken over by the TWOC, Textile Workers Organizing Committee, so I was a member.

Q. Are the United Textile Workers of America affiliated with the AF of L?

A. It was formerly affiliated with the AF of L, but it is affiliated with the Committee for Industrial Organization.

Q. And how long has that happened?

A. The latter part of 1935 or the early part of 1936.

Q. Now, I understand then that there is no longer a United Textile Workers of American affiliated with the AF of L, is that correct?

A. That's right.

Q. Now you worked in this Phoenix Silk Mill in Allentown, Pa., didn't you?

A. That's right, I did.

Q. And when did you cease working there?

A. Some time in the middle of 1931.

Q. Did you work elsewhere after that or did you then go with the CIO?

A. No, I worked in other plants.

Q. Where?

A. I worked in the Maxwell Silk Company.

Q. Pardon, I didn't hear you.

A. Maxwell Silk Company.

Q. Where?

A. In Allentown.

Q. Where else?

A. Sauqouit Silk Company in Bethlehem, Pa.

THE REPORTER: Please spell it.

THE WITNESS: S-a-u-q-o-u-i-t.

Q. Where else?

A. Hanover Silk Company.

THE REPORTER: H-a-n-o-v-e-r?

THE WITNESS: Yes.

A. (Continuing.): And the Sontag Silk Company.

Q. Where else?

A. And Belvidere Silk Company.

Q. Where is that?

A. Belvidere.

Q. Where is that, in what state?

A. New Jersey.

Q. When did you work there?

A. After the termination of the 1931 silk strike.

Q. The termination of the 1931 what?

A. The 1931 silk strike.

Q. Well, I thought you were giving me those places in the order of time. Do I understand that you left the Phoenix in 1931 or terminated your relationship there, then you went to the Maxwell?

A. No, I worked in the Belvidere plant.

Q. I see. How long were you there?

A. Only two nights and a half.

Q. What?

A. Two nights and a half.

Q. In what capacity did you work there?

A. As a silk weaver.

Q. Will you tell us why your employment was so short there?

A. Because of the fact that I got ruptured in lifting a weight and went to the hospital.

Q. What hospital?

A. The Allentown Hospital.

Q. Now, where did you next go after the Belvidere plant?

A. After I come out of the hospital I went to the Sauquoit Silk Company in Bethlehem.

Q. How long did you work at the Sauquoit Silk Company in Bethlehem?

A. I worked there till 1932, when, due to slack in business, I was laid off.

Q. Then please where?

A. Then from there I went to Edna Silk Company.

Q. Where is that?

A. Allentown.

Q. How long did you work there?

A. I worked there about two weeks.

Q. Why was that employment so short?

A. The wages were terrible.

Q. Then where did you go?

A. From there I went to Canover.

Q. And then where?

A. Sontag Silk Company.

Q. Where is that?

A. Allentown.

Q. How long were you with Hanover?

A. Where?

Q. How long did you work at Hanover?

A. *Han*-over?

Q. Yes.

A. I haven't got no Hanover.

Q. Hanover Silk Company. I am abbreviating it. I see I don't know the term.

How long did you work at the Hanover Silk Company?

A. I didn't work at the Hanover that I know anything about.

Q. Well, why did you use the word *Han*-over to describe the place?

THE COURT: We are wasting time. You did use a word that sounded a little like that. What is the name?

THE WITNESS: Sontag, I said.

THE COURT: I thought you said something like Hanover.

THE WITNESS: Canover.

Q. How long did you work at the Canover Silk Company?

A. I worked there about a month.

Q. And why was your employment so short there?

A. Because of the fact that they put on a third shift and I was the loom fixer and my employment was terminated because of laying off the third shift.

Q. And where did you go from the Canover Silk Company?

A. Sontag.

Q. How long were you at the Sontag?

A. I was there a week.

Q. And why was your employment so short there?

A. Because of the fact that the Sauqouit Silk Company management called me back to go back to work there since I was laid off there as a loom mechanic, loom fixer.

Q. Did you go back to Sautouit?

A. I did.

Q. How long did you stay there?

A. I stayed there till the 1933 national silk strike.

Q. And in 1933 did you go out on strike?

A. Yes, I did.

Q. And have you worked in any factory or at any trade other than organizer for unions since then?

A. Yes, immediately after the 1933 strike I got a job at the Roberson & Mumma.

Q. And where is that?

A. At Allentown.

Q. How long did you work there?

A. I worked there till the first of the year when I was given an assignment by the United Textile Workers of America as a CIO—I mean as an organizer for the United Textile Workers of America covering a 45-mile area from Allentown, Pa.

Q. Now, at this time were the United Textile an A. F. L. organization?

A. At that time they were.

Q. And you were given the job to organize them for CIO?

A. No, organize the workers in the United Textile Workers of America.

Q. And how long after you started that did the United Textile Workers of America cease to be an A. F. of L. organization?

A. I believe in the latter part of 1935 and the early part of 1936 nine organizations got together and formed the Committee for Industrial Organization to organize the mass production workers.

Q. You ran for office in Allentown, didn't you?

A. I did, I was a candidate for mayor on the Democratic ticket.

MR. FRAZER: What ticket?

MR. MATTHEWS: Democratic.

Q. What else were you a candidate for?

A. For councilman.

Q. On what ticket?

A. Democratic.

Q. And what else did you run for?

A. That's all I run for in the political field.

Q. How?

A. That's all in the political field.

Q. Were you elected?

A. No, I was not elected.

Q. What year did you run for mayor on the Democratic ticket?

A. 1935.

Q. What year did you run for councilman?

A. 1937.

Q. Can you tell me, please, what month the election was in 1937?

A. The Primaries were some time in September, I believe.

Q. And the General in November?

A. The General in November.

Q. Did you run in both?

A. No, in the Primaries.

Q. And your mayoralty venture, was that a Primary or a General election?

A. What is that?

Q. The venture for the mayoralty of Allentown.

A. Was in the Primary.

Q. Was in the Primary. Did you survive the Primary?

A. No, I came in second in the Primary.

Q. How many ran?

A. Three.

Q. Three; that wasn't bad.

Now, you said that Mr. Lewis, Mr. John L. Lewis, called you to Washington. Will you give me the date of that again?

A. On May the 10th we were called into Washington.

Q. What year?

A. 1937.

Q. Now at this time, May 10, 1937, what was your official connection with the CIO, if anything?

A. I was the field representative for the steel workers organizing committee in Allentown, Bethlehem, and surrounding towns.

Q. How long had you been that, prior to May 10, 1937?

A. I had been there since August 4th.

Q. 1936?

A. That is right.

Q. Now you were assigned by John L. Lewis personally, were you?

A. That is right.

Q. To organize unorganized workers in New Jersey?

A. That is right.

Q. And you were assigned to organize under Mr. Carney?

A. That's right.

Q. Now in the American Home Products Company, you told us on direct examination that in the latter part of

September or early October workers came to your office and said that they wanted to organize under CIO. Who were those workers?

A. I said yesterday that I would like to——

MR. FRAZER: Now, if it please the Court, I think in a case of this kind the identity of workers should not be disclosed and I would therefore object to the asking of this question.

MR. MATTHEWS: That's free speech with a vengeance. Now if your Honor pleases, it is absolutely necessary to have the identity of these workers.

THE COURT: Suppose as a result of their being identified they lost their jobs?

MR. MATTHEWS: There is ample remedy for them, if they lose their jobs.

MR. FRAZER: No, there is not.

THE COURT: Is it very satisfactory?

MR. MATTHEWS: Now, yesterday, you used that example, and I am going to ask for those names today very carefully, because they had been reinstated by the N.L.R.B., so if they have been reinstated by the N.L.R.B., I can't see why they are in any danger.

I want the names of these workers who came to him, because I want to show who they are and what they are, in plan with the general statement made in the defense that this man and his group were not organizing labor people, but organizing Communist people.

MR. FRAZER: Where is the defense to which you refer? Will you show me in your answer the defense to which you refer?

MR. MATTHEWS: May I have a ruling on that question? I have to show this. How will I ever test this man's credibility?

THE COURT: You are faced, Mr. Matthews, with an extremely serious issue, and, that is imperiling the jobs of working people.

MR. MATTHEWS: Where——

THE COURT: Wait a minute. Which in these times, as I think we all have to admit, is a serious thing. Now how we can protect their positions, we will have to carefully scrutinize.

MR. MATTHEWS: The solicitude of the court is really touching to me and——

THE COURT: I am not at all ashamed of it, Mr. Matthews. A solicitude for working people's jobs is something I don't think anyone should be ashamed of.

MR. MATTHEWS: Well, it is very easy for your Honor to sit there and say that, who really and truly was reared in the lap of luxury. Why shouldn't I be solicitous? I never took a case against union labor in my life. I have represented the unions all my life. I was born in a union shop. I am the son of a factory worker. So I have solicitude for the working man.

THE COURT: Well, if we both have solicitude, let us agree that we preserve their positions for them.

MR. MATTHEWS: I am going to preserve them, and I wouldn't be true to my father in Heaven if I didn't, my own natural father as well as my God. But by the same token, no Communistic group is going to persecute labor while I have a tongue in my head. That's why I volunteered my services in this case.

THE COURT: I said, Mr. Matthews, before you so kindly volunteered your services, that I thought that for the welfare of the United States I should be glad to go into the Communist issue at length.

MR. MATTHEWS: It isn't a question of going into the Communist issue. It is to show that this witness

here, with his tender solicitude, as your Honor thinks, for the workers, has been making a living for himself and has been representing not the workers, but those who would destroy the workers. Why is it, your Honor, today, that in this case the CIO people, who sat down all over the country and destroyed the working man in the eyes of the public, are now glorified under the false issue of free speech?

I submit, with respect, and out of the very bottom of my heart, and with all the power in my body, that I have a right to cross-examine this man, to search this man as to who those workers were.

Why, your Honor, yesterday you asked that question, because your Honor's mind is a mind of fairness. You wanted to know who they were. He said to you, "I don't want to tell you," and yet he tells you afterward that two were reinstated without pay and two were reinstated with pay; and they were reinstated: your Honor asked the question, after a proceeding before the N.L.R.B.; he said yes, your Honor.

Now, if that is true, your Honor, those names are not only pertinent and competent, but no harm can come to them.

THE COURT: Well, I must be sure of that fact, and I am not presently sure of it. All I am trying to do is to see that no harm does come to them.

MR. MATTHEWS: Then at that rate we can't ask for the name of a single person who allegedly has a job; and to deny these defendants that right so absolutely flusters me that I don't know what to say about it other than to put my objection on the record with every bit of strength I have.

THE COURT: If you will wait a minute, Mr. Matthews, we will try to work out a plan whereby they can be protected and yet their names be given. I did ask for their names and I think their names would be useful.

MR. MATTHEWS: I would be glad, your Honor; I would be glad to have them given to the Court in camera, in secret, and I shall refer to them as X and Y in examination, if that will help the Court, because I appreciate the Court's concern; but the Court must not allow that I——

THE COURT: We are not in disagreement about the matter; we are only in disagreement as to method.

MR. MATTHEWS: All right, your Honor. I will accept the Court's method.

Could I have those names given to the Court in camera, and then could I refer to them as A and B, you instructing the witness that such a one is A and such a one is B?

THE COURT: Can't that be done, Dean Frazer?

MR. FRAZER: I have no objection, if what Mr. Matthews means is that your Honor is to receive the names, and to designate them A, B, C and D, communicate the symbols to Mr. Matthews, so that he may refer to them as A and B, instead of Smith and Jones, and the examination be on that basis, with the knowledge between your Honor and Mr. Macri. I have no objection to that. I do not wish Mr. Matthews to have the names. I don't know where they will go when he gets them.

MR. MATTHEWS: That is a very generous statement from you, whom I have known all my life.

THE COURT: No, I think that is unjust to Mr. Matthews.

MR. MATTHEWS: You think it is unjust to me?

THE COURT: Yes.

MR. MATTHEWS. Well, I am afraid——

MR. FRAZER: I will withdraw it if there was anything unkind in it.

MR. MATTHEWS: Perfectly all right. I know you don't mean it. I think, your Honor——

THE COURT: We cannot overlook, Mr. Matthews, the fact that sometimes employers, whom I don't think either you or I admire, try to punish by way of reprisal the men who they think are trying to organize their factories. We can't overlook that fact.

MR. MATTHEWS: That is very true, your Honor, but by the same token it will do me no good.

THE COURT: If that is the reason that this witness does not want to give me the names, I wish to work out a method whereby those reprisals could not be inflicted upon the men.

MR. MATTHEWS: We appreciate, of course, that if he gives names of people and those people deny those facts then his credibility is seriously impaired.

THE COURT: Can't you give me the names, Mr. Macri?

THE WITNESS: Yes, I can.

THE COURT: All right. Will you write them down? Have you got a pencil

THE WITNESS: Yes, I have one.

(The witness complied, handing the paper to the Court.)

THE COURT: Do you know their addresses?

THE WITNESS: I have that at the office.

THE COURT: The witness has given me two names, Mr. Matthews. He says he also has their addresses in his office, if you want them.

MR. MATTHEWS: Well, the addresses, of course, would only be important to verify the truth of his statement.

THE COURT: Yes.

MR. MATTHEWS: But the names don't mean anything unless he has the addresses of them.

THE COURT: He says he has them.

Q. Will you produce the addresses for us?
A. Sure, I will produce them.

MR. MATTHEWS: Well, may I defer the cross-examination as to the identity of those people in order to test his credibility, that they were workers who came to him, until such time as the addresses are produced?

THE COURT: If you desire, yes.

MR. MATTHEWS: Thanks.

Q. Well, at any rate, Mr. Macri, how many of these workers came to your office and said they wanted to organize under the CIO?

A. Two of them had elected themselves as the spokesman for the rest of the group, and they came to our office——

Q. I am sorry. I didn't hear.

A. I say two of them came to our office for the purpose of getting the full information about the CIO, and then they took application cards to sign their fellow workers up in the plant and outside of the plant.

Q. I see. Had you been in contact with them at all before they came?

A. I had not.

Q. At that time was there any union in the American Home Products Company?

A. None, none.

Q. None at all?

A. None at all.

Q. Is there one now?

A. What semblance of organization that we have at the present time—members at large, but no local.

Q. So is your CIO membership without a local charter the only organization that American Home Products Company has had in the last five years, the only labor organization?

A. Well, the only thing that they have, as reported to me, is an employee social and savings club.

Q. Employee social and savings club?

A. That is right.

Q. Was it affiliated with anything beyond, or was it a unit standing alone?

A. A unit standing alone. They formed themselves through—the foreman and the bosses of the various departments got together and formed their social organization.

Q. Do you know when that was formed?

A. I do not recall.

Q. Was it after your activities started?

A. After our activities started.

Q. Is it still there?

A. Yes.

Q. Now you say that after your activities started the wages were raised from two to four cents an hour in that plant, seven days' paid, as I understood and read the testimony: what did you mean by that?

A. Seven paid legal holidays were paid; seven paid legal holidays were paid.

Q. I see.

A. And a week's vacation with pay.

Q. A week's vacation with pay?

A. That is right.

Q. And you said there were other concessions. Was there anything beyond?

A. Well, that is what I meant, by that concession.

Q. Then you say they discharged two workers. Now who were those two workers that were discharged, or four workers, better, that were discharged and reinstated?

MR. FRAZER: Weren't they the same——

THE COURT: Are those the names I have?

THE WITNESS: Yes.

THE COURT: I have those names.

MR. MATTHEWS: Those names should go in the record because those names, according to the testimony given to the Court here, were reinstated after a proceeding before the N.L.R.B.—two were reinstated with back pay and two without.

THE COURT: I suppose, Mr. Macri, that it is a public proceeding?

MR. MATTHEWS: Sure.

THE COURT: That N.L.R.B., so that their names already are known. Those are the two——

THE WITNESS: That's right.

THE COURT: Their names must be both a matter of record——

MR. MATTHEWS: Sure.

THE COURT: And I imagine in the newspapers.

Q. Who were those four people?
A. Sam Goldberg.
Q. Sam Goldberg?
A. That is right.
Q. Yes.
A. William Penesbene.

THE REPORTER: Will you spell it, please?

THE WITNESS: P-e-n-e-s-b-e-n-e.

Q. P-e n-e-s——
A. P-e-n-e-s-b-e-n-e.
Q. That's two. Who are the other two?
A. And Jose O'Neill.
Q. Jose, J-o-s-e?
A. Jose O'Neill, that's right.

Q. And the other one?

A. And the other one, I just don't recollect at the present time.

Q. Can you get that name for us?

A. I can get that name.

Q. And will you?

A. Yes.

Q. Thank you. Now which were the two that were reinstated without pay?

A. Without pay was Jose O'Neill and the other fellow; Sam Goldberg and William Penesbene were reinstated with pay.

Q. Why was the distinction made?

MR. FRAZER: Now, I object.

THE COURT: I suppose that is in the record of the NLRB, Mr. Matthews. I don't know.

MR. MATTHEWS: Well, if he knows, he is entitled to tell me.

MR. FRAZER: What is the significance, if he does know?

MR. MATTHEWS: Very, very significant.

MR. FRAZER: It is just taking time.

THE COURT: I think you can produce the record of the NLRB.

MR. FRAZER: We have an important witness to get today, if Mr. Matthews will let us reach him.

THE COURT: I think that's in the record, Mr. Matthews, of the NLRB.

Isn't it, Mr. Macri?

THE WITNESS: That's right.

MR. MATTHEWS: I am entitled to cross-examine, to ask this witness the reason why they were reinstated, if he knows, without pay, and the others, with pay.

THE COURT: I will allow you to introduce the record.

MR. FRAZER: He didn't make the distinction. It is a matter of record in the NLRB, if he wants to find that out.

THE COURT: I will sustain the objection. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Do Goldberg and Penesbene and Jose O'Neill and the unidentified fourth work for the American Home Products Company?

A. At the present time Sam Goldberg, after he was reinstated they found a technical excuse and discharged him again, and we have that case filed with the National Labor Board. William——

Q. Now, will you answer my question and please don't volunteer, because I asked you a very plain question.

MR. FRAZER: He is answering it.

Q. Do these——

MR. MATTHEWS: I don't mind the interruptions, if Frazer has gone haywire over night that's not my fault, but I have asked a plain question that requires an answer of yes or no.

Q. Now do these men, these four men, work for the American Home Products Company now? Yes or no.

A. At the present time?

Q. Yes.

A. No.

Q. Who do not work for them now? Any of them work for them now?

A. No, they were laid off and fired.

Q. All right, when?

A. About a month and a half ago or more.

MR. MATTHEWS: Now, I will ask your Honor or call to your Honor's attention the story that he didn't want to give you the names of these people because they might lose their jobs, and yet they haven't got their jobs.

THE COURT: I think he was talking about different people, Mr. Matthews.

MR. MATTHEWS: Oh, no; he was talking about the people—I will get the record.

MR. MATTHEWS: Oh, no, he was talking about the people—I will get the record.

MR. FRAZER: It seems to me it is not proper for a counsel to sum up his points in attacking credibility during examination. He may make his points and reserve them for discussion later but not do it while examining the witness.

MR. MATTHEWS: I am not making any points, I am calling the Court's attention to the fact, which I know the Court will appreciate, that this witness said he didn't like to give the names of these men because it might affect the men. Now he says they don't even work there.

You turn to it and I will come back to it. It is the testimony as to the American Home Products Company (handing record to Mr. Hershenstein).

Q. Where does Goldberg live?

THE COURT: He said he had those addresses, I thought, Mr. Matthews, and would give them to you later.

MR. MATTHEWS: No, he had the addresses of the two that came to solicit him to organize.

THE WITNESS: He lives in New York but I don't know just exactly, I think it is 1612 Park Place.

Q. Is that a residence, 1612 Park Place?
A. That's right, an apartment.
Q. Do they all live there, those four?
A. No.
Q. Where does Penesbene live?
A. In New York also
Q. Where does Jose O'Neill live?
A. In New York; it might be in Brooklyn.

THE COURT: Is his name H-o-s-e—Jose—is he a Spanish gentleman? It is O'Neill.

MR. MATTHEWS: I think so. We don't have O'Neills with Jose, J-o-s-e. We have others with Patrick.

Q. They all live in New York then, don't they?

MR. MATTHEWS: I am deferring a moment——

(Mr. Hamill speaks to Mr. Matthews aside.)

(Side bar discussion between counsel for the parties and the Court.)

MR. ERNST: Your Honor please, I would like to make a statement: the suggestion has been made that the Mayor is ready in Court. I indicated yesterday and will indicate now that we have an intervening witness, possibly two; they should not take more than twenty minutes. Mr. Hamill wants to know who they are. I will say who they are to see if we can accommodate the Mayor. They are representatives of the National Lawyers Guild of Hudson County. Their testimony should be brief and only go to the point that the National Lawyers Guild could not get a hall. We are perfectly willing to advise now that we will put those witnesses off to another day if we could get an estimate, even with any creditable figure of time in it, as to the length of time that this cross-examination will continue. We do not intend, however, to commit ourselves as to an intervening witness unless Mr. Hamill will tell us the ap-

proximate length to which he is going. I would like to accommodate the Mayor in this respect.

MR. MATTHEWS: Well, if you do then I am willing to defer the cross-examination and you may put the Mayor on now.

MR. ERNST: No; we want this finished if you will tell us how long.

MR. MATTHEWS: I will take as long as it is necessary for my case and if he wants to accommodate the Mayor—and the Mayor isn't going to fall for that bunk—I now offer to defer the rest of my cross-examination until after the Mayor has testified.

MR. ERNST: You refuse to accommodate the Mayor by merely indicating your estimated length of cross-examination. I thank you.

MR. MATTHEWS: You are as welcome as the flowers in Jimmy Walker's May.

THE COURT: Go ahead, Mr. Matthews.

By MR. MATTHEWS:

Q. Now, you didn't organize a CIO local in that plant, you say, of the American Home Products?

A. Because of the interference.

Q. Now answer yes or no.

A. Well, I will have to elaborate it.

Q. No, you are not going to elaborate on that question. You didn't organize one, did you? Answer me yes or no.

A. How could we with the interference?

MR. MATTHEWS: I ask that the witness respond your Honor please, in a responsive manner.

THE COURT: The answer is no.

Q. All right, that is your answer, no, that the Court just gave me, isn't it?

A. I couldn't organize it.

MR. MATTHEWS: The Court has said your answer is no. All right, he shook his head (to the reporter).

Q. Now, on the 26th of October you parked your car at ten o'clock in the morning in Jersey City and you came out at 2:05 in the afternoon and there was a tag on your car; what kind of a tag?

A. For parking overtime.

Q. What did you do with it?

A. And there was no parking zone.

Q. You have answered my question. What did you do with the ticket?

A. I took the ticket and gave it—called up our attorney, Rothbard, and told him what to do with it and he said to send the dollar—that is probably just what it cost, and I called up the lieutenant or segeant over there and asked him how to dispose with it and if it was all right for me to send the money and they said, "Yes, send the money and the ticket and it will be O. K."

Q. So that's the end of the tag episode, is it? October 28th. now, that is when you said that you had a conference arranged with the Standard Cap & Seal Company to negotiate an agreement, is that right?

A. That's right.

Q. You did negotiate an agreement, didn't you?

A. We finally did.

Q. But you staged a sit-down strike before you did, didn't you?

A. I did not stage no sit-down strike.

Q. Wasn't there a sit-down strike in that factory?

A. The workers themselves stopped working.

Q. Yes. Did they stay there and did the police have to put them out at night?

THE COURT: Where is this factory?

MR. MATTHEWS: Standard Cap & Seal Company.

MR. FRAZER: If he was there and knew about it.

MR. MATTHEWS: Now, I object to any prompting of this witness; he can answer the question.

MR. FRAZER: Not at all.

MR. MATTHEWS: He was there, I will tell you that.

MR. FRAZER: All right.

Q. Didn't Captain Walsh and the police come and put the workers out at ten o'clock at night?

A. I wasn't there.

Q. You weren't there when Captain Walsh put the workers out? Didn't you tell Captain Walsh that you had permission for them to stay there, Chief Walsh rather?

A. I did not.

Q. You didn't. Don't you know that they sat down in that factory and were put out by the police?

A. I only know the accounts that was told to me by the president of the local when he called me up at my hotel and said that the police come in and evicted these people after the employer had agreed to leave—Mr. Hilsdon had agreed to leave those workers in the plant.

Q. Don't you know, Macri, that Mr. Hilsdon told the police to put the men out, that were sitting down on his factory?

A. Mr. Williams, the president of the company, said that he did not call the police in.

Q. Don't you know that he called them and ordered them put out?

A. I am going by Mr. Williams when I took that matter up and he said no, that he didn't call the police, the police come in themselves.

Q. But they were sitting down in the factory, eh, at night?

A. I don't know as they were sitting; I was negotiating an agreement with the management when I came there.

Q. Where was the management?

A. In the office.

Q. Where?

A. At 150 Bay Street.

Q. Where was the factory?

A. 150 Bay Street.

Q. When were you negotiating?

A. When I was called up in the morning at ten o'clock.

Q. How long were you there?

A. I was there all day negotiating over the phone with Mr. Williams.

Q. When did you leave there?

A. I left there at 8:30.

Q. Were the workers still sitting in the factory when you left?

A. That was the understanding.

Q. Were they still sitting in the factory when you left?

A. They were still there.

Q. Yes. So when you were giving the police captain a lecture on constitutional rights you didn't think about the time you had your strikers sit down in a man's factory in Jersey City, did you?

A. I didn't——

MR. FRAZER: I wish he wouldn't argue with the witness.

MR. MATTHEWS: That is not arguing with the witness, that is calling his attention to his fervent plea for constitutional rights.

Q. What was the date of the sit-down strike in the Standard Cap & Seal Company in Jersey City?

MR. FRAZER: I object to the term.

MR. MATTHEWS: Of course, you do.

MR. FRAZER: There was no sit-down strike.

MR. MATTHEWS: Of course, you do. Well, if workers are sitting in a man's factory till ten o'clock at

night and have to have the police put them out, I don't know whether you call it a sit-down, lie-down or stand-up strike.

Q. When was that?

A. Some time in the early part of December when they went out on a strike.

Q. December what year?

A. 1937.

Q. Don't you know the exact day? It was the same day that you had the conference, wasn't it?

A. Oh, no.

Q. Didn't they sit down the same day that you had the conference?

A. I was called in the morning by the president of the local——

Q. Answer my question. Didn't they sit down the same day that you had the conference, that you said the police followed you to the conference?

A. I did not, I didn't say any such thing.

Q. Was the strike the same day that you had the first conference with the Cap & Seal Company, October 28th, in other words?

A. October 28th I had the conference with the official of the Standard Cap & Seal when the police stopped me and searched my car.

Q. Now, in December, 1937, you say this sit-down strike was.

A. I didn't say it was a sit-down.

Q. I know you didn't but I did, when they stayed in till ten o'clock at night and had to have the police put them out; that was in December 1937?

A. That's right.

Q. Had you been negotiating from October 28th to December, 1937, with the Standard Cap & Seal Company?

A. With the official of the company, yes.

Q. And when did the men go out on strike, after they had sat down till ten o'clock?

THE COURT: We will adjourn now, Mr. Matthews.

(Ten minute recess.)

(Following a short recess.)

Q. Now on November 29, 1937, you said you left your room at five o'clock. Was that five o'clock in the morning?

A. That is right.

Q. With McGinn, Foley and Barry, is that right?

A. Correct.

Q. You went to distribute literature, is that right?

A. That is right.

Q. In Jersey City?

A. That is right.

Q. Now the policemen after you met them took you out of the city, did they?

A. They did.

Q. Yes. Then you got out and went across the Pulaski Skyway in a taxicab and came back in again to do the thing that you were told not to do by the policeman? Is that right?

A. That was our constitutional right——

Q. Answer me yes or no. Then you got a taxicab and went back into Jersey City to do identically the second time what the police had forbidden you to do, is that correct?

A. Just a minute. I—over the Pulaski Skyway I went with my car——

Q. All right.

A. And I parked my car in a lot and went in a taxicab from the lot down to the United Steel Workers Office.

Q. Now, will you answer my question, regardless of your method of itinerary, or your mode of travel, you went back to do the identical same thing that the police had taken you out of the city for doing, is that correct?

A. I went to distribute literature, which was our constitutional right.

Q. Answer my question.

MR. MATTHEWS: If your Honor please, may I have him answer that question?

THE COURT: Would you mind just a minute, please.

(At this point the Court took up another matter at side bar.)

THE COURT: Will you read the question now please?

(Pending question and answer read by the reporter.)

MR. MATTHEWS: I ask that that be stricken out, and I ask for a responsive answer.

THE COURT: The answer is yes.

MR. MATTHEWS: The answer is yes.

Q. Now when you came back the second time, you said that you went to the office of the—was it the steel workers office or where?

A. The United Steel Workers office.

Q. The United Steel Workers office. And you said when you got there there were a lot of photographers and newsreel men and newspaper men there?

A. That is right.

Q. How did they get there?

A. They came there knowing that we were going to distribute literature.

Q. Who told them that you were?

A. Some of the press.

Q. Who told the some that told the others?

A. (No answer.)

Q. Did you?

A. What?

Q. Did you tell some of the boys you were going to distribute?

A. I told some of the press.

Q. Whom did you tell?

A. George Faust.

Q. What paper?

A. The *Peoples Press.*

Q. The *Peoples Press.* Who else?

A. Philadelphia *Record* and *Times*, I guess.

Q. The Philadelphia *Record* and the Philadelphia *Times?*

A. The New York *Post.*

Q. The New York *Post?*

A. That's right.

Q. And who was there from the New York *Post?*

A. I don't know who were there; I knew there was a lot of photographers there and newspapers.

Q. And newspaper men and newsreel men, you said?

A. That's right.

Q. So you were staging a public exhibition the second time you came back, is that it?

MR. FRAZER: I object to that: that is a mere conclusion.

THE COURT: That is characterizing it, Mr. Matthews.

Q. Were you stating a public exhibition the second time you came out?

MR. FRAZER: I object to that.

THE COURT: Those are words too vague, Mr. Matthews. Sustained.

MR. MATTHEWS: I don't know how to make it any more explicit.

THE COURT: You asked whether photographers and newspaper men were there; he said yes.

MR. MATTHEWS: Yes. I asked him now when he came back the second time whether he was staging a public exhibition.

Q. Were you?

A. I did not.

MR. FRAZER: I suppose there would have no exhibition if there hadn't been assistance from the defendant. It would have been very tame. They couldn't have staged a public exhibition without some assistance from the defendant.

MR. MATTHEWS: Apparently Spaulding has never read of the exhibitions that this CIO have staged. Go to Cleveland, go to Detroit, go to Pennsylvania, and learn. You should have read before you went into your case.

Q. Well, now, who were the newsreel men, who got them there?

A. No doubt from one to the other they were notified.

Q. And when you got there you went out to distribute your literature and you were arrested, were you not?

A. Went upstairs and helped to——

Q. But after you went out with your literature you were arrested?

A. After we walked into the building——

Q. Answer me. After you went out of the building with your literature you were arrested?

A. That's right, after we went down Exchange Place.

Q. All right. Now, you were told to go out again, weren't you, but you went right across the street?

A. I asked them if I——

Q. Now answer my question. You were told to go out of the city, weren't you? You said so on direct.

A. I was.

Q. You didn't go out of the city, did you?

A. I did not.

Q. No, you went right across the street, didn't you?

A. That's right.

Q. And proceeded to do for the third time the thing that the police had forbidden you to do the first time?

A. We had a right to distribute——

MR. MATTHEWS: Will your Honor strike that out please.

Q. You proceeded to do for the third time the same thing that the police had forbidden you to do the first time, isn't that correct?

A. Went across the street to distribute——

MR. MATTHEWS: I ask for an answer to that, your Honor please. I want to show the recalcitrancy of this gentleman in the face of the law. It is up to them to show whether the law was or was not——

THE COURT: You weren't here, Mr. Matthews, but we also went into all that with the other witnesses who were distributing literature. The fact seems to be that this ordinance, if applicable, had no method for testing it, had no clause whereby they could obtain a permit other than to distribute and be arrested for so doing. That is what happened and the certiorari was allowed by the Supreme Court.

MR. MATTHEWS: That is perfectly all right.

THE COURT: Apparently it is pending and afterwards, as you probably know, the United States Supreme Court declared a similar ordinance unconstitutional.

MR. MATTHEWS: I am familiar with that decision—It came down, I think, in March, and the ordinance is, with respect to your Honor, "similar," if we use "similar," in the broad sense.

THE COURT: The only difference being that the Georgia ordinance, all of which I pointed out the other day, has a provision for asking a permit to distribute.

MR. MATTHEWS: Now, may I ask my question for the third time?

MR. FRAZER: May I ask what advantage there is in having the witness say it for the third time? He has said it twice already.

THE COURT: All the witnesses, Mr. Matthews, that were at this distribution occasion, so to speak, admitted or declared that they went there for the express purpose of testing the ordinance. Now, this witness admits the same thing, I understand.

MR. MATTHEWS: I don't care anything about that, if your Honor please, neither will the Court above in judging this witness. The Court above might well say what your Honor isn't saying presently—"What right did this man have to take the law into his own hands?"

THE COURT: They might well say it but he says he went there for the purpose of testing the ordinance, if you call that taking the law in his own hands.

MR. MATTHEWS: That is for the upper Court to say; they may disagree with you, they have with me.

THE COURT: He has answered the question, he went there for that purpose.

MR. MATTHEWS: All right, that is what I wanted, a responsive answer. So the record does show, as your Honor says.

THE COURT: He says it as all the other witnesses have said it.

MR. MATTHEWS: I don't care about the other witnesses. I want Macri to say that for the third time he went across the street and did again what he had been forbidden to the first time. That is correct?

A. I went across the street and saw McGinn——

Q. I object, and ask again isn't that what you went across the street for?

A. Yes.

MR. FRAZER: He did slightly different things.

MR. MATTHEWS: Yes, you are doing different things today. You had better be careful. You are going to get it soon.

MR. FRAZER: May I ask that I be not threatened in Court?

Q. Now that was the third time. You were arrested——

MR. FRAZER: May I be not threatened in Court, if your Honor please?

MR. MATTHEWS: Oh, Spaulding! Isn't that funny, that I should threaten you! My dear boy! I might threaten you with osculation, perhaps, but not really threaten you.

THE COURT: That is a terrible threat, Mr. Matthews.

Q. You were finally arrested, weren't you?
A. I was arrested.

MR. MATTHEWS: Now, that would come out of your book.

Q. You were finally arrested, eh?

MR. ERNST: I will advertise it.

MR. MATTHEWS: Yes, you will advertise it before you get through here.

Q. You were arrested finally, weren't you?
A. That is right.
Q. And you got bailed the next day?
A. That is right.
Q. Now on February 10th you went to the Consolidated Razor Company and you said that two workers came out of the plant, and when they came out they told an officer that you, or two men, better, were molesting them; that is true, isn't it? That was your testimony, wasn't it?
A. That's what they said, yes.
Q. Yes.
Q. Who were they, do you know?
A. I don't know. They are two foremens, two bosses.

Q. You don't know who they are?

A. No.

Q. And in your capacity as investigator or organizer for the CIO, you never found out, eh?

A. The thing was that——

Q. Answer me, you never found out?

A. The only thing I found out was through the lady who happens to be in charge of the building; she told me that they were two bosses.

Q. So that you never got any further information than that; you never found out who they were?

A. I did not.

Q. No. You could have found out, couldn't you?

A. (No answer.)

Q. What?

A. I might have, if I had made a thorough investigation.

Q. Yes. And you did not. Now when the workers who came out of the plant protested that you were molesting, or these two men were molesting them, the police officer took you to the station, did he, in your car?

A. The officer did take me to the station.

Q. Yes. And when you got to the station—I think the fellow's name was Captain Gordon, wasn't it?

A. Captain of the precinct.

Q. Yes. He said, "We can't hold them. Let them go." Is that correct?

A. After he had asked for identification.

Q. Yes. And after the investigation he said, "We can't hold them, let them go." Is that right?

A. Yes.

Q. What did you do? You went right back to the plant again, didn't you?

A. I did.

Q. Yes.

A. To go down and talk to the workers.

Q. You went right back again to talk to the workers, despite the fact that two workers had complained that you were molesting them?

A. Well, these two, the two workers were bosses——

Q. That's correct, isn't it? Answer me yes or no.

A. What is your question again, please?

Q. You went right back to the plant again, after Captain Gordon let you go—is that correct?

A. I went back to the plant.

Q. Yes. And when you got back to the plant the same Captain Gordon, as I understand it, came to your side, while you were there, is that right?

A. He came there with his machine and just as soon as I parked——

Q. Never mind that. Just answer my question. Is it the same Captain Gordon who came?

A. That is right.

Q. That is right. Is there a CIO union in the Consolidated Razor Company?

A. There is not. We didn't get a chance to organize one.

Q. All right. That is the answer, "There is not." And you were starting to organize in February 1937, is that right? February 10, 1937, rather, is that correct?

A. February 10th.

Q. Was there any union in the Consolidated Razor Company?

A. None that I know of.

Q. Now, do you know whether there was or not, or are you doubtful about it?

A. No, there wasn't any, any organization in the plant that I know of.

Q. None that you know of. And it was that occasion that you proceeded to tell Captain Gordon about constitutional rights, wasn't it?

A. After he had told me that I couldn't park there, couldn't talk to the workers.

Q. Was that the occasion that you proceeded to tell Captain Gordon——

A. On February 10th——

Q. About constitutional rights?

A. That is right.

Q. That was two months after you staged a sit-down strike in the Seal and Cap Company, is that correct?

MR. FRAZER: I object. I object. There is no testimony to that effect, and I object to the qualification of the witness' language by Mr. Matthews, putting words in his mouth which he never said.

THE COURT: As I understood this witness, he said that he had nothing to do with the episode you speak of.

MR. MATTHEWS: You have a right, of course, to believe or not believe——

THE COURT: I said I understood the witness to say——

MR. MATTHEWS: Yes, yes.

THE COURT: I didn't say anything about my belief.

MR. MATTHEWS: Oh, he was there. He told me he was there, trying to organize them, and he told me that the bosses had called up and that they had said it was all right for them to stay there, but that the police had put them out. Now you can call that a sit-down strike or not, if you want. But my opinion is that that question is perfectly proper, to ask him—this lecture to the police captain on constitutional rights was two months after the sit-down strike in the Cap and Seal Company.

MR. FRAZER: After the occurrence.

THE COURT: Well, that is a fact.

MR. FRAZER: After the occurrence.

THE COURT: But I don't think there was any testimony that he staged it, Mr. Matthews.

Q. Was this lecture, that you proceeded to give to this captain, two months after the sit-down strike in the Cap and Seal Company?

MR. FRAZER: In the first place, the witness has not said anything about a lecture. That is another gratuitous definition. He spoke to Captain Gordon——

THE COURT: He said there was a discussion.

MR. FRAZER: There was a discussion between him and Captain Gordon which involved the question of constitutional rights, not a lecture.

THE COURT: Substitute the word "discussion," Mr. Matthews.

MR. MATTHEWS: We will take the word "lecture" out.

Q. This was two months after your discussion with Captain Gordon, in which discussion you had told him, I take it in the same tones you used on the stand here today, about what you thought of constitutional rights. It was two months later, wasn't it?

A. It was on February 10th.

Q. Yes. And your discussion on constitutional rights was on what date?

A. February the 10th.

Q. And the Crown and Seal Company stay-in, where the people stayed in and had to be put out by the police, was December——

A. I want to say——

Q. Answer. Was it December? Forget what you want to say.

A. The workers stopped work.

Q. Yes.

A. On December—around December.

Q. Answer my question.

MR. MATTHEWS: I move that that be stricken out.

Q. Was that two months after——

MR. FRAZER: He is trying to give you the date.

Q. Was that two months after——

MR. FRAZER: He is trying to give you the date, Mr. Matthews.

Q. Was that two months after the gentlemen and ladies in the Crown and Seal Company plant had remained until ten o'clock at night and had to be put out by the police? Answer yes or no.

A. Now, Counsellor——

Q. Answer yes or no.

A. I say——

Q. Answer yes or no.

A. The conversation——

Q. Answer yes or no.

MR. MATTHEWS: I submit, your Honor.——

A. The discussion——

MR. MATTHEWS: I submit I am entitled to an answer yes or no. I ask that the witness be made to answer yes or no.

THE COURT: Chronologically the answer is yes.

MR. MATTHEWS: Well, pardon me, your Honor. Your answer won't do the Circuit Court of Appeals any good.

MR. FRAZER: Might I ask——

MR. MATTHEWS: It won't do them any good and it might do them a lot of harm.

MR. FRAZER: Might I ask the witness a simple question?

MR. MATTHEWS: I object to his interjecting and ask a ruling on my question—a yes or no answer to that question.

THE COURT: Yes, you may answer.

A. It was on February the 10th, the discussion——

Q. Was it two months after the time that the workers stayed in the plant and were put out by the police? Answer yes or no.

THE WITNESS: Your Honor——

MR. MATTHEWS: I object to that.

THE COURT: He is asking you a question about the calendar and of course the answer must be yes or no.

A. But the thing is that he is bringing in the question of staging an affair at the Standard Cap and Seal, and he is trying to pin me down on that question, where the thing is that the incident that took place between Captain Gordon and myself, the discussion on the constitutional rights, was February the 10th.

THE COURT: Before, you mean?

THE WITNESS: No, on February the 10th was the discussion with Captain Gordon.

THE COURT: Well, when was this episode of the cap—what is the name?

MR. FRAZER: Cap and Seal.

THE COURT: Cap and Seal. When, chronologically?

THE WITNESS: When the workers went on strike.

Q. When was that?

THE COURT: The date; all we want is the date.

A. I don't know the date.

Q. You gave it on direct as in December.

A. In December; I said in December.

Q. 1937. Now, I ask you again, was the episode of the Cap and Seal, where the workers stayed in until 10 o'clock

at night and were put out by the police, two months prior to your talk with Captain Gordon about constitutional rights, answer yes or no.

THE COURT: Count the days, please.

A. It was two months afterwards.

Q. The episode at the Cap and Seal was two months after the talk with Captain Gordon or two months before it?

A. You mean the Standard Cap and Seal?

Q. I mean the episode in which they stayed in the place and were put out by the police. Was that two months before your talk with Captain Gordon or not?

A. Two months before.

Q. Yes. Finally that witness answered a question. Have you any other employment except as organizer for the CIO business?

A. No other employment.

Q. How long have you known Carney?

A. Since May 10, 1937.

Q. Then you were not in Detroit or those other places with Carney, were you?

A. I was not in Detroit.

Q. You weren't in the Rubber Company strike with Carney?

A. I was not. I don't know anything about the strike end.

Q. We will tell you about it later.

MR. MATTHEWS: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. Just a minute. Now, Mr. Macri, referring to the Home Products Corporation incident concerning which Mr. Matthews has been asking you, will you state exactly what happened there on that occasion, as to the owners, the bosses, your negotiations and——

THE COURT: You have got the wrong company, I think.

MR. FRAZER: Is it?

MR. MATTHEWS: The Standard Cap and Seal is the sit-down strike company.

MR. FRAZER: That is right, the Standard Cap and Seal. I beg your pardon. The Standard Cap and Seal.

A. At the Standard Cap and Seal we had gotten a letter that these workers were to be organized and I went and made the contact at the plant and talked to a couple of workers and asked about their conditions. I told them to come up and see me at my office, which I had just opened up at 216 Academy Street in Jersey City. So that night they came and we discussed their problems and they went out and started to sign up the workers——

MR. MATTHEWS: I object to what they did: he doesn't know. It is only what they told him.

A. (Continuing.) And on October the 28th, as I have testified, we finally had the greater majority of the workers——

MR. MATTHEWS: Now, I object, if your Honor please: this is all a repetition.

MR. FRAZER: It is a fact: it is merely leading up to——

MR. MATTHEWS: I haven't objected to repetition. I thought you wanted to hurry for the Mayor. You will excuse me.

Q. Go ahead, Mr. Macri.

A. We had the majority of the workers under the Wagner Act for Collective Bargaining and I notified Mr. Hilsdon that we had arranged for a conference just a few days prior to that, and the date of October 28th was set and we had

negotiated wages, hour and working condition and seniority rights and many other concessions that we had gotten for the workers, such as time and a half and ten cents an hour increase for each and every worker in the plant. The president, Mr. Williams, Jarvis Williams, had agreed to recognize the United Hood and Seal Workers as the sole and exclusive bargaining agency for all the employees of that plant and also to sign an agreement and I was to draw the——

MR. MATTHEWS: When was this, please? We have to have the date.

THE WITNESS: What is that?

MR. MATTHEWS: When was this, when he had agreed to recognize the United Hood and Seal and sign an agreement?

THE WITNESS: It was some time in the early part of November.

MR. MATTHEWS: Thank you.

A. (Continuing.) And when I had drawn up the agreement I presented it to Mr. Williams for signature, for him to read it over, and if there was any wording that we had to agree upon either strike out or enter some other to be satisfactory to both parties, the union and as well as to the management. Mr. Jarvis Williams then didn't want to sign an agreement for some reason or other.

MR. MATTHEWS: When was that, please?

THE WITNESS: What is that?

MR. MATTHEWS: When was that, please?

THE WITNESS: That was some time in November or the latter part of November or the early part of December.

A. (Continuing.) Finally we had a number of negotiations and conferences. We agreed to everything as I have

stated, with the exception of the company,—the management didn't want to sign an agreement. Then when we had the last conference and still the management didn't want to sign the agreement——

MR. MATTHEWS: And when was that, please, that last conference?

THE WITNESS: The last conference, I do not have the date here with me.

MR. MATTHEWS: My gracious, you had a list of dates yesterday.

THE WITNESS: Yes, I did, but I didn't have that.

MR. MATTHEWS: Was it December 15th?

THE WITNESS: If you want that I can give it to you.

MR. MATTHEWS: Maybe I could prompt your memory; was it December 15th? I have it myself.

THE WITNESS: No, December 14th was the date that we had signed the agreement.

MR. MATTHEWS: It was prior to the 14th?

THE WITNESS: That's right.

A. (Continuing.) And the workers were always after me when the company was going to sign the agreement. I said the company will sign the agreement the day indicated. "We will need a few more conferences and I believe that they will reach an agreement that will be satisfactory to the union and the members and the management." Finally the management still insisted that they wanted to post a notice as to what we had agreed verbally and they didn't want to sign a contract. On one morning the early part of December I got a call at my office at 10 o'clock that the president of the local, a fellow by the name of Frank Bennett, called me up and said that the workers have went on a strike and I told him over the phone that he couldn't do that, that he

couldn't go out on a strike because after all we are negotiating and we didn't want no strike of any sort, and I said, "Put Mr. Hilsdon on," the manager, and Mr. Hilsdon talked to me. He said, "What is it all about?" I said, "I don't know. What's the trouble there?" And he told me that the workers stopped working and I said, "They can't stop working because after all we are negotiating an agreement and they have got to go back to work," and I would be down there immediately.

MR. MATTHEWS: What date was that?

THE WITNESS: That I would have to—it was in the early part of December.

MR. MATTHEWS: Wasn't it December 14th?

THE WITNESS: No, no.

MR. MATTHEWS: All right.

A. (Continuing.) So I got in my machine and went down to the plant and it took me probably anywhere from thirty minutes to forty-five minutes. I got to the plant, and when I got there I saw a detective, which I believe his name was Deputy Chief Wilson, and I talked to Mr. Hilsdon what it was all about. Mr. Hilsdon says he don't know what it is all about and I said, "All right, let me talk to these workers, they have got to return back to work." So I went in, Mr. Hilsdon took me in to the workers where they were huddled around talking the thing over, and I told these workers that they have got to go back to work, that we couldn't have any strike under no conditions because we are in the midst of negotiations, and we are ready to sign the agreement, and I am sure that Mr. Williams would sign the agreement. Well, the workers said, "No, we want an agreement signed," and I said, "You have got to go back to work," and they wouldn't go back to work, and I called up Mr. Williams and told him that we should get together in order to straighten this matter out. Finally I stayed

there negotiating over the phone all day with Mr. Jarvis Williams. He had made other proposal over the phone and I had given proposal and of course it was just a collective bargaining matter over the phone. So finally we expected to settle the thing the next morning into the conference.

MR. MATTHEWS: What day was that?

THE WITNESS: That was in the early part of December.

Q. Now, did you have any conversation with Mr. Jarvis Williams in relation to the remaining in of the workers in the shop?

A. Mr. Hilsdon, just before I got down, and I said to Mr. Hilsdon at that time, I said, "Mr. Hilsdon, these workers want a signed agreement. You can see that for yourself." I said, "After all I have told these workers they have got to go back to work. Since they are not going to listen to me they demand that they have an agreement, that they are not going to go by an oral agreement or a verbal agreement, that they want it in writing," and I told Mr. Hilsdon that these workers would probably remain there, and he agreed saying that it is O. K. that the workers could stay there and in the morning the thing would be settled.

Q. What happened after that arrangement had been made with the management?

A. After that I left the plant at 8:30 and I came to the hotel. No sooner I got to the hotel the girl said, "You are wanted on the phone." I went in the booth and Mr. Bennett called me up and said, "Two busloads of officers came in and kicked us out, told us we got to get out of here and said for a committee of them to come down and see them at their office" and I said that I would be over there in the morning, for them to meet at our headquarters in the morning.

Q. Did you talk to Williams later about it?

A. I have had conference later.

Q. Did you sign the agreement?

A. We finally reached an agreement.

Q. And have you had any trouble there since that time?

A. No trouble.

Q. Did he say who called in the police?

MR. MATTHEWS: I object, that is hearsay. Williams is available.

MR. FRAZER: This is the whole story.

THE COURT: I sustain the objection.

MR. MATTHEWS: The whole story cannot come in that way.

THE COURT: What is Mr. Williams' first name?

THE WITNESS: Jarvis Williams.

MR. FRAZER: Cross-examine.

RE-CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Now, just one or two questions. You said just a moment ago that you told Mr. Hilsdon these workers would probably remain there. You meant overnight; didn't you, they were going to remain there?

A. I said——

Q. Now, answer my question, please.

A. Yes, they said they were going to remain.

Q. They were going to remain there, going to sit down there until they got their agreement, isn't that correct?

Q. What was that question?

Q. They were going to sit down there until they got their agreement? Isn't that correct?

A. That because of the fact——

Q. No, sir; isn't that what they were going to do?

MR. FRAZER: How does he know?

A. How do I know what they were going to do?

Q. So you don't know. When you told Mr. Hilsdon those workers will probably remain there, what did you mean?

A. I meant that they probably would remain there because I was going to leave at 8:30.

Q. You did leave at 8:30?

A. I did.

Q. And they did remain there?

A. Probably they did remain there.

Q. Because you got a telephone from Bennett after you got to Newark that the police had put them out?

A. That's right.

Q. That is all.

MR. FRAZER: That is all, Mr. Macri.

MR. ERNST: Mr. Chasan.

RAYMOND CHASAN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Your address, Mr. Chasan?

A. 52 Broadman Parkway, Jersey City.

Q. Your profession?

A. I am a lawyer.

Q. A member of what bar?

A. The bar of New Jersey.

Q. And you live in New Jersey now?

A. That was my residence that I gave you.

Q. And your office address?

A. The Labor Building, 26 Journal Square, Jersey City.

Q. And you are a member of various lawyers' organizations?

A. I am, sir: I am a member of the Hudson County Bar Association and also of the Hudson County Chapter of the National Lawyers Guild.

Q. Now, will you state your relations with the National Lawyers Guild, Hudson County Chapter, in respect to obtaining halls in Jersey City.

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: How is that relevant?

MR. ERNST: Your Honor please——

THE COURT: They are not plaintiffs, are they?

MR. ERNST: I will prepare for it.

Q. Did you hear the mayor of the City of Jersey City make a statement in regard to the National Lawyers Guild?

MR. MATTHEWS: I object, if your Honor please, immaterial and irrelevant to this issue.

THE COURT: Is he a plaintiff?

MR. MATTHEWS: The mayor will be here.

MR. ERNST: Your Honor please, this is going to be evidence of direct intimidation of the lips of Frank Hague himself. We will prove that this man, connected with the Lawyers Guild, heard the mayor threaten the Guild, and as a result of that threat we will prove that the Guild was unable to get a meeting place in Jersey City. What more direct, what better intimidation can we get?

THE COURT: They don't seem to be a plaintiff though.

MR. ERNST: No, but your Honor, please, the purpose of their meeting was for the same purpose as the meetings of which testimony has been allowed in: for example, Workers Defense, Mr. Tolman, Mr. Thomas, the Whig Cliosophic Society, testimony was allowed in where Borah was not allowed to speak under their auspices.

MR. MATTHEWS: Now, I object to that.

MR. ERNST: Just let me finish a moment.

MR. MATTHEWS: I want to object and ask the Court to allow me to interrupt this man because he is just

talking for the newspapers, that's all. His headlines last night were "Egan charged with so and so." We are subpœnaing some of the newspapers for you.

Mr. Ernst: If your Honor please, the objection was made to the Egan testimony, not by us, but by this gentleman. Let me get it in. Will you open the door for it?

Mr. Matthews: I would like to open the door for you, but it isn't on testimony.

Mr. Ernst: Your Honor please, I want to proceed with the examination.

Q. Did you hear the mayor of Jersey City——

Mr. Matthews: I object to it as not relevant to this issue.

Mr. Ernst: Let me finish my question.

Mr. Matthews: You have already asked one; that has not been ruled on.

Mr. Ernst: I withdraw all questions so that you can follow me simply.

Mr. Matthews: Follow you simply is good: I simply follow you.

Mr. Ernst: Finished?

Mr. Matthews: Will be shortly if you do.

The Court: Do I understand from this witness that you asked for a permit?

Mr. Ernst: No.

The Witness: No, your Honor, we——

Mr. Matthews: No, I object to any statement from the witness.

The Witness: May I address the Court, Mr. Matthews, with your permission?

MR. MATTHEWS: Off the record, your Honor please, may the address be off the record?

MR. ERNST: Your Honor please, I would like to ask a question unless your Honor objects.

THE COURT: The Cliosophic and the others asked Commissioner Casey for a permit. Now, did this man ask Commissioner Casey for a permit?

MR. ERNST: No, this goes to intimidation which prevented the use of halls.

MR. MATTHEWS: I object to that. It might be rebuttal, I doubt even that; but it certainly isn't direct.

THE COURT: Did you ask for a hall?

THE WITNESS: Yes, your Honor, we applied for various halls.

MR. MATTHEWS: May I respectfully object and ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

THE WITNESS: We applied to various halls in order to engage facilities for a meeting of the National Lawyers Guild. Some of the halls we applied to we had previously had meetings.

Q. And there were conversations with hall owners.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: Just that there were conversations.

MR. MATTHEWS: I object to it, all of this testimony is irrelevant to this issue; they are not parties plaintiff.

THE COURT: You see, Mr. Ernst, the other hall testimony was on behalf of the American Civil Liberties Union, as I remember it, and the CIO who were parties plaintiff.

Q. The purpose of the meeting, Mr. Chasan, was to be what?

MR. MATTHEWS: Now, I object to the testimony, if your Honor please.

MR. ERNST: Take your objection and let us go on.

THE COURT: Was the purpose stated to the hall owners?

THE WITNESS: The purpose was stated as——

MR. MATTHEWS: I object to the purpose. The Court asked you was the purpose stated.

THE WITNESS: The purpose was stated, yes, your Honor.

Q. Did the purpose relate——

MR. MATTHEWS: Just a minute.

Q. —to the deprivation of civil liberties?

MR. MATTHEWS: I object, your Honor please, to that question.

MR. ERNST: Let him state his objection and let us have a ruling.

MR. MATTHEWS: I object to that question.

MR. ERNST: Your Honor, let us have a ruling.

MR. MATTHEWS: After all, this is New Jersey, and it is the Federal Court, your Honor please.

MR. ERNST: In spite of the fact that it is New Jersey.

MR. MATTHEWS: In spite of the fact that you are here and if your Honor please, I think it is highly irrelevant and immaterial to this issue; I think it is really an injustice to these defendants to have the testimony.

THE COURT: I think, Mr. Ernst, you will have to add this Lawyers Guild as a party plaintiff in order that they might testify as to private halls, if that is the testimony.

MR. ERNST: If your Honor please, will you allow me to argue to that for a moment?

THE COURT: Certainly.

MR. ERNST: Without interruption by Sir John, just a minute? I won't be three minutes.

This testimony is clearly material if, as we believe, it will show that this applicant, a member of the bar, in behalf of a lawyers' association, was unable to hire a hall in Jersey City, following the statements of Frank Hague——

MR. MATTHEWS: Now, I object to that, if your Honor please.

MR. ERNST: Without——

MR. MATTHEWS: You see, this is stuff for the newspapers. Won't the Court please stop this talk for the newspapers?

MR. ERNST: If your Honor please——

MR. MATTHEWS: That's all it is.

MR. ERNST: I am arguing as to the materiality of the evidence.

MR. MATTHEWS: This, if your Honor please, doesn't——

MR. ERNST: Your Honor, will you exclude the press and let me go on with my argument, if that is what the gentleman wants?

MR. MATTHEWS: Oh, that's a play-up entirely. I object to you making that statement.

MR. ERNST: I am going to continue my argument in answer to the objection.

MR. MATTHEWS: I object, if your Honor please, to his making those statements for the record.

And, if your Honor please——

MR. MATTHEWS: Judge Clark, may I now state on this record, and I won't say any more, there is an objection to this man's being put on as a witness because his organization is not a party-plaintiff. Now this gentleman, who represents the parties-plaintiffs, is trying to enter on the record in this case, solely for the sake of publicity, extraneous matters, and to get the testimony in in that fashion. Won't your Honor, in decent respect of the rights of these defendants, forbid it?

MR. ERNST: Well, they have to be a party-plaintiff, Mr. Ernst. I will sustain the objection.

MR. ERNST: If your Honor please, will you hear me on the argument?

THE COURT: I will be glad to hear you, but——

MR. ERNST: What——

MR. MATTHEWS: There it will go again.

MR. ERNST: If your Honor please, I will be very short and specific, if not interrupted.

The reason why this is material, even though they are not parties-plaintiffs, is the following, and we are willing to show everything that we intend to do in this situation.

MR. MATTHEWS: I object to it, if your Honor please. He is only going to repeat.

MR. ERNST: I can argue a point——

MR. MATTHEWS: He is only going to repeat.

MR. ERNST: Since when is a lawyer not allowed to argue an objection?

MR. MATTHEWS: When a lawyer is not arguing an objection; when a lawyer is making a speech. That's when. And I object to a speech.

MR. ERNST: I will give you the facts that we will prove.

MR. MATTHEWS: I object to the offer, if your Honor please, because your Honor said they are not a party-plaintiff, and that's the right answer; that's the legal answer.

MR. ERNST: If your Honor please, a party, not a party-plaintiff, inquiring as to the possibility of getting a hall, after the mayor has threatened the applicant——

MR. MATTHEWS: I object, if your Honor please. There goes the statement again, solely for the newspapers. Hague will be on that stand; you ask him.

MR. ERNST: We are going to tie this up with Mr. Hague.

MR. MATTHEWS: I object, your Honor, and ask that it be stricken out, that remark.

MR. ERNST: If your Honor please——

MR. MATTHEWS: You are going to tie yourself up before you are through here.

MR. ERNST: If your Honor please——

THE COURT: Allow him to finish.

MR. ERNST: Let's be calm, no apoplexy.

MR. MATTHEWS: No apoplexy! Say, my dear fellow, my blood pressure is so normal that when I look at you it becomes sub-normal. Go ahead.

MR. ERNST: If your Honor please, the hall owners' testimony will tie up, and we are going to get them here——

MR. MATTHEWS: I object to their testimony.

MR. ERNST: To the other——

MR. MATTHEWS: Please.

MR. ERNST: —to the other side of the conversation, whereby the hall owners said——

MR. MATTHEWS: I object to what the hall owner said.

MR. ERNST: We are showing you how this will be material.

MR. MATTHEWS: I object, if your Honor pleases. I object. These tactics I have read of, but never have experienced before in the trial of a cause.

MR. ERNST: It is about time you learned——

MR. MATTHEWS: It apparently is foreign to this jurisdiction.

MR. ERNST: If your Honor please——

THE COURT: I think they should be a party-plaintiff, Mr. Ernst. You may amend the complaint——

MR. ERNST: Your Honor, I would like very much to have the opportunity to argue, because I know I am right, as a matter of law, assuming——

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: Anybody——

MR. MATTHEWS: I object to these statements. It is only another way. This fellow's unbridled effrontery is such that one would never thing him a professional man in this argument.

MR. FRAZER: May I protest, sir, against Sir John's continuance of that kind of talk?

MR. MATTHEWS: This is an infringement upon the rights of these defendants, and I repeat one would never think him a professional man——

MR. ERNST: I don't object to his remarks on that score.

THE COURT: I wish you would avoid personalities.

MR. ERNST: No, you can't stop him.

MR. MATTHEWS: He is continually repeating to this Court what he is going to do about Mayor Hague, your Honor, I await with a great deal of pleasure what he is going to do about him and with him. We will have it this afternoon.

MR. ERNST: Now, if your Honor please——

MR. MATTHEWS: I object. Won't your Honor in fairness to these defendants, if he desires to make an argument to you about this matter, hear him at recess? Because he now is making an argument not for your Honor, but is making a statement for the press.

MR. ERNST: Your Honor, until my argument has been heard this man can't tell for what purpose it is.

And let me give you a hypothetical case on the rules of evidence.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: Assuming—assuming that any resident of Jersey City tried to get a hall and was told by the hall owner that the reason for the denial related to the case—follow me, your Honor—we are entitled to bring in the hall owner as to the hall owner's conversation and the hall owner's statements as to why the denial. Now, assuming that the hall owner said that the reason was because some of the parties defendants would do so and so to the hall, if it were allowed surely the other side of the medallion, the statements of this witness to the hall owner, must also come into evidence. It is just a question of when.

THE COURT: The difficulty seems to me, though, to my mind, that this person, this organization, rather,

is not a party plaintiff and is not entitled to any relief under the bill.

MR. ERNST: If your Honor please, it isn't for the purpose of relief. It is for the purpose of proving intimidation of those persons who wanted to discuss——

MR. MATTHEWS: I object to those statements, to prove intimidation.

MR. ERNST: —who wanted to discuss the relations. The purpose of the Lawyers Guild was to discuss civil liberties, the same as Borah.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: You allowed the Borah testimony in.

THE COURT: That was for a public meeting. It seems to me there is a distinction.

MR. ERNST: The only distinction, as I see it, your Honor, is that in one case we went right for the permit and in this case we have to go through, and we can go through with our evidence, the material as to intimidation, by the defendants or the hall owners.

MR. MATTHEWS: I object to all this.

THE COURT: Well, you can make a motion to add these people as parties-plaintiffs, and we will argue that later on.

MR. ERNST: All right.

THE COURT: We will adjourn now until two o'clock.

(Noon recess.)

AFTERNOON SESSION.

THE COURT: Go ahead.

MR. ERNST: If your Honor please, I would merely like to have noted on the record an exception to the

exclusion of the testimony of Benjamin Freedman and Raymond Chasan.

THE COURT: I thought I had already given you one, Mr. Ernst.

MR. ERNST: I didn't know whether it was on the record.

THE COURT: If not, it is granted.

MR. ERNST: Thank you.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

MR. FRAZER: Mayor Hague, will you take the stand?

FRANK HAGUE, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mayor, you are Mayor of the City of Jersey City?

A. I am.

Q. And how long have you occupied that office?

A. I beg pardon?

Q. How long have you occupied that office?

A. This term that I complete now will be twenty-four years. I was four years Director of Public Safety.

Q. You have been a member of the city government of Jersey City ever since the adoption of commission government?

A. I have.

Q. And that was in 1913, am I right?

A. '13.

Q. Prior to that did you hold public office?

A. Yes, I was a member of the Street and Water Board in Jersey City, an elective office, for three years, close to

three years, prior to the adoption of commission government.

Q. The city is still governed under the so-called Walsh Act, that is right?

A. Yes, sir.

Q. And that act provides for five commissioners among whom the various departments of the city are divided?

A. It does.

Q. And what department do you preside over as mayor?

A. The Department of Public Affairs, that is, the Medical Center, the Health Department, Building Department, and the Health Department,

Q. You have, however, as mayor general supervisory power over the other departments, have you not?

A. I have.

Q. And do you exercise that power?

A. I do. I exercise it when necessary.

Q. And are the policies of the other departments your policies?

A. What did you say?

Q. I say are the policies of the other departments your policies?

A. Oh, yes, yes, I would say yes.

Q. You are also the leader of the Hudson County democracy, are you not?

A. Well, that is the—yes.

Q. And of the democracy of the State of New Jersey?

A. Well, I don't know, I sometimes think I am.

Q. And you are——

A. I am looked upon as the leader.

Q. Yes, I think it is generally conceded that you are.

MR. MATTHEWS: Now, if your Honor please, of course that statement——

THE COURT: I don't see how the political questions are relevant. How are they relevant?

MR. FRAZER: Well, the whole matter of power is associated, it is a political office he is holding, and his power is based not only upon election to office but also upon his connection with the Democratic organization.

THE COURT: I don't see how his power can be increased by some political connection one way or another. The power must come from the office, not from the political party that elected the person to the office.

MR. FRAZER: I didn't quite hear that.

THE COURT: I say the power must come from the office, not from the political party, whatever it may be, that elected the person to office.

MR. FRAZER: That is a happy theory, sir; I don't think it is usually the practice.

Q. You are vice-chairman of the National Democratic Organization?

MR. MATTHEWS: I object to that as immaterial.

THE COURT: Sustained.

MR. FRAZER: Exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Now, Mayor, on the ninth of December, 1937, you had occasion to go to New York in the Supreme Court Building there for certain testimony?

A. To go to the Supreme Court Building, where?

Q. In New York City.

A. Testify where? Before whom?

Q. Before a commission that was sitting there?

A. (No answer.)

MR. MATTHEWS: If you recall it is all——

MR. FRAZER: That is what I am asking.

Q. A meeting presided over by Senator John J. McNaboe.

A. Oh, on the juvenile delinquency? Or are you referring to the Senate Committee from Washington about the campaign contributions?

Q. No, I am referring to a meeting held in the Supreme Court Building in New York where Senator John J. McNaboe was sitting with a joint legislative committee on the administration and enforcement of law?

A. I was there.

Q. Yes.

A. I testified there.

Q. That is what I thought.

A. That is, I made a statement. There was no oath. It was just endeavoring to ascertain some information concerning juvenile delinquency.

Q. Did you refer there to an ordinance of Jersey City in relation to distribution of circulars?

A. No, I don't see how I could. It had no concern before that committee.

Q. Did you see any report of your appearance at that meeting in the papers?

A. Well it depends upon what you refer to as reports.

Q. I mean——

A. Was that the report of the committee or report of the press?

Q. No, the press report.

A. The press?

Q. Yes.

A. Oh.

THE COURT: You have a clipping there, haven't you?

MR. FRAZER: I have a clipping, yes.

THE COURT: Will you show it to Mayor Hague?

Q. I show you a clipping from the *New York Times* of December 10th and ask you whether you recall that meeting?

A. What do you refer to? Will you point it out?

Q. The meeting. I refer——

A. Was that the meeting or was that the interview with the newspaper men? Isn't that what you are referring to, the newspaper men?

Q. I understood it was at the meeting.

A. No.

Q. The report.

A. It was outside in the corridor, that you are referring to, I imagine.

Q. Well, did you either outside in the corridor or at that meeting over which Senator McNaboe presided——

A. Well, it was impossible to be at the meeting, Counselor; it had to be outside. Because it was no concern of the Senator's as to anything about the distribution of circulars.

Q. So that your recollection is that it was outside, at which the conversation——

A. Yes; anything concerning the distribution of circulars was outside, yes.

Q. Well, do you remember on that occasion stating that there was such an ordinance in Jersey City and that it had been upheld by the highest courts in this state, although it had never been taken to the Court of Appeals, do you remember making such a statement?

A. Well, I don't know. That is rather difficult. If the paper states that, that I did make that statement, possibly it is true, I don't know. Of course, you cannot always be positive about what some of the men are writing, particularly in this controversy. There has been quite a change come over the Guild since this controversy has taken place.

Q. Now, did you at that time state that that ordinance was constitutional?

MR. MATTHEWS: I object as immaterial, your Honor please.

A. Yes—I don't know at that time but I will say that now that I always did.

Q. And still do?

A. Assume that it was constitutional.

Q. And still do?

A. Well, not since the U. S. Court has decided against it.

Q. Since the Court in the Griffin case——

A. Yes, that wiped it out as far as we were concerned.

Q. And you now believe the ordinance to be unconstitutional?

A. On the advice of our corporation counsel, yes, sir.

Q. Do you know that subsequent to the decision in the Griffin case the police of Jersey City gathered circulars, took them from the hands of persons who were trying to distribute them?

MR. MATTHEWS: Just a minute, Mr. Mayor. I think you should have the whole story there. That was to prevent disorder, that wasn't to violate the ordinance.

MR. FRAZER: I asked him simply whether he knew that.

THE COURT: Just answer it yes or no, Mayor, if you knew it.

A. Well, it all depends, Judge, just exactly what the circumstances were. The police of Jersey City must assume that if there is disorder and there is any danger of violence or uprising and the circulars are a circular that would offend the people of Jersey City, why, of course, naturally they would feel it was their duty to remove the circulars.

Q. I show you Exhibit P-32 and ask you whether you think such a circular is one which should be, for the reasons which you say, prevented from being distributed?

A. No, I wouldn't say there was any objections to that.

Q. Or——

A. Why should there be an objection where the President is involved?

Q. Or P-7, Exhibit P-7?

A. Well, I would say there is an objection to that: that is not a proper circular to distribute amongst a community that is law-abiding; that is a religious circular.

Q. You think a religious circular should not be distributed?

A. No, I do not. I think they ought to keep out.

Q. And if they are——

A. They shouldn't come in there with any purpose of aggravating and disturbing the peace and quietness of the city. What right did that circular have in Jersey City?

Q. I am not on the stand, sir.

THE COURT: What is that one?

MR. FRAZER: This is the one which was——

MR. MATTHEWS: The hanging of Thomas Campbell with a legend on it that is entirely contrary to historical fact.

MR. FRAZER: Exhibit P-7, which it was testified to was taken away from the distributors by the Jersey City police.

Q. You think that was proper then, do you, Mayor?

A. It depends entirely on what the circumstances was. If there was objections by the people receiving those circulars, yes; if there was no objections, and there was no disorder, it makes no difference.

Q. I show you Exhibit P-1 and ask you if you think that that is objectionable.

A. I don't see any objections to that. As I say, it depends entirely upon circumstances. You must remember there was quite a little disorder there of people resenting these men who were distributing these circulars, and women on forcing them in their hands and in their pockets and upon their person, and there was numerous complaints about the conduct of those people.

Q. Did you ever see that done?

A. No, only just what the police and the comment in the public press from time to time the reports of these co-

currences that took place there; that is how I familiarized myself. I don't endeavor to try to ascertain an official report on everything that goes on.

Q. Are there any official reports bearing upon this subject?

A. No, sir, there is no need of one.

Q. You do know that a number of these takings up of circulars took place subsequent to the decision in the so-called Griffin case?

Mr. Matthews: Now, if your Honor please——

A. I am not familiar with that. I cannot answer it.

Mr. Matthews: If your Honor please——

Mr. Frazer: He says he cannot answer it; there is no particular reason for another speech.

Now, in this same report, newspaper story, from which I have been reading, it states that at the Legislative Committee on Law Enforcement in the Supreme Court you were asked whether efforts of the CIO to organize Jersey City workers would constitute an attempted invasion. Do you remember that?

A. No, sir.

Q. You do not.

The Court: That's the same one, isn't it, the same article?

Mr. Frazer: The same what?

The Court: The same article we had before?

Mr. Frazer: Yes, sir, the same article.

The Court: Which you showed to the witness.

Mr. Frazer: At least I think it is.

Q. Well, you have stated about invasions, haven't you, Jersey City by the——

A. Oh, frequently; made public utterances, made public statements frequently.

Q. Yes. And what in your opinion constitutes an invasion?

A. Of course, you must remember, so that we will get the matter very clear, your Honor, I have been associated with labor for a great number of years——

Q. Now, I am asking you a definite——.

A. Well, now, just a minute, just a minute. You asked for my explanation. You must accept it. I mustn't have any interruptions.

MR. FRAZER: I submit that I am entitled to a responsive reply, sir.

THE COURT: You have a party to the cause on the stand now. I think he should be allowed to answer.

THE WITNESS: Judge, I can't answer the question to please the counsel. I must answer the question to please the witness.

MR. FRAZER: No.

THE WITNESS: I can't be permitted to commit myself to a question yes or no, that requires a statement. He asked——

THE COURT: I will allow him to answer; I will allow him to answer.

MR. FRAZER: I don't conceive that the Mayor's idea that the testimony he is to give is to be pleasing to me is the proper definition of testimony. I want to elicit certain facts. I only want facts. But what facts I wish to elicit are mine, not the Mayor's.

THE WITNESS: In asking me the questions you must accept them as I give them.

MR. FRAZER: If they are being elicited by me I agree, but otherwise I would suggest to the Court——

THE WITNESS: Your question to me—will you repeat the question?

THE COURT: The question was in very general terms.

THE WITNESS: Very general.

THE COURT: As to what an invasion constitutes.

MR. FRAZER: Very general; what constitutes an invasion?

THE WITNESS: Yes, but I must be permitted to answer that question.

MR. MATTHEWS: The Court allowed it, Mayor. Go ahead.

A. I have had a great number of years of experience with labor, and in over twenty-five years I have never had any disputes with the American Federation of Labor——

Q. Now——

A. Now, just a minute. We have never had any invasion from the American Federation of Labor.

MR. FRAZER: Now, may I ask the Mayor——

THE WITNESS: Just a minute.

MR. FRAZER: —to define "invasion" which he is now using again? That's what I am trying to ascertain, what he considers an invasion. Now he has just used the word which I am asking him to define.

A. I am going to explain my interpretation of invasion, but you are interrupting me.

Q. I am sorry. I don't wish to interrupt you, but I would like to have you confine yourself to the questions.

A. My interpretation of invasion is the declaration that Harry Bridges has made, the noted Communist of the country, when he ordered 500 of his strong-arm men to invade Jersey City, to destroy the civic industry of Jersey City. That's an invasion.

Q. Now——

A. And when Mr. Carney, in a public declaration, says that he is going to invade Jersey City 3000 strong, law or no law, that's an invasion. That's my interpretation of an invasion.

Q. Did Mr. Carney invade Jersey City with 3000 men?

A. No, he was afraid to.

Q. Do you know that he wanted to?

A. He desired to.

Q. And you learned that from a newspaper report?

A. Yes.

Q. Did you ever communicate in any way with Mr. Carney as to the truth of that report?

A. I had no occasion to communicate with him.

Q. So that your definition of an invasion involves a very large number of persons?

A. No: from my experience in Detroit, Ohio, and all the other cities that the CIO had any dispute or any labor controversies——

MR. FRAZER: Now, I object, if I may——

A. (Continuing.) You are asking for my interpretation of an invasion.

Q. No, I am not.

A. I say bloodshed, riot, disorder, violence, in my estimation is an invasion.

Q. How many people do you think would have to be in a group to constitute an invasion, as you call it?

A. It depends. An invasion could be of ten or more.

Q. Ten or more?

A. A thousand—go to any number.

Q. And ten or more people coming into Jersey City, for instance, to distribute circulars, would constitute an invasion in your opinion?

A. Now, don't confine it to distributing circulars. Why don't you simply say that they are armed to the teeth to destroy life and property? That's my interpretation of an invasion.

Q. Unless they are armed to the teeth——

A. There is nobody going to harm anybody with a circular in their hand.

Q. Unless they are armed to the teeth to destroy life and property, even though they come in substantial numbers, you wouldn't consider it an invasion?

A. The reputation that has preceded this element of the CIO was sufficient evidence to me that they were dangerous, and that for them to invade a city meant serious trouble.

Q. Did you consider that there was an invasion of the City of Jersey City on the morning, early morning, of November 29, 1937?

A. Yes, sir.

Q. Now, there were a number of arrests on that day, were there not, Mayor?

A. Yes, sir.

Q. Were there any arms found upon the invaders?

A. Not that I know of.

Q. Do you know how many invaders there were?

A. Well, from Mr. Carney's statement the night before, two days prior, there were to be three thousand.

Q. Do you know how many there were?

A. A hundred or two hundred. It didn't go over the two hundred limit.

Q. How many police did you have to handle that invasion?

A. Oh, that—Commissioner Casey handled that.

Q. You don't know how many were detailed for that purpose?

A. No, I do not.

Q. As a matter of fact, no one was armed as far as you heard?

A. No, I did not hear that they were armed.

Q. And you would undoubtedly have heard if that had been the fact?

A. The papers, the newspaper men were there. They were right there. They observed everything, and if they were armed the papers would carry a complete story of it.

Q. Did you hear of their having anything but circulars that day?

A. Did I hear—what's that, Counselor?

Q. That they had anything, the so-called invaders, whether they had anything with them that day besides circulars?

A. I didn't hear that they had.

Q. You do know that a large number of them were arrested, don't you?

A. Yes. Well, a large number—there was thirteen arrested.

Q. Well, when you say arrested, you mean taken to the police station?

A. Yes.

Q. You do not consider it an arrest when a police officer puts them in a car and takes them somewhere not the police station?

A. No, I think he is doing them a favor.

Q. I see. But there were in addition to those whom you say were arrested a substantial number who were transported by force of the police department to places where they themselves had expressed no desire to go, is that right?

A. That's the paper account.

Q. Well, don't you know as a matter of fact whether it was or not true?

A. It was true.

Q. It was true. Now, some of those were taken in cars and some of them were forced on ferryboats and tube trains, that is true, isn't it?

A. Well, that I am not familiar with, Counselor, the papers carried that story; that's the only official notice I have on that.

Q. Do you consider it neighborly to take the undesirable persons from Jersey City and dump them into another community?

A. Do I what?

Q. Think it is neighborly?

A. To dump them into another city?

Q. To dump into another city se whom you don't want in Jersey City?

A. If they come from that other city and they are dumped back I think that is neighborly.

Q. Assume they did not come from the other city but lived in Jersey City?

A. Well, of course, Counselor, you cannot have the police examine on the premises and ascertain individually where they come from; if they appear and there is disorder and there is danger of riots, of course the police must use discretion and get rid of them as best they can.

Q. Do you know Mr. Carrick, a young lawyer, Judge Carrick's son?

A. No, I have never met him. I heard of him. I knew his father very well.

Q. You know that he lives on Gifford Avenue in Jersey City?

A. The family lives there, yes, sir.

Q. Do you think it was proper for your police to take young Mr. Carrick and force him to go on a ferryboat to New York when he said he lived in Jersey City?

A. Was he there that morning?

Q. He wasn't there that morning.

A. I don't think he was there that morning.

Q. No, he was there on another occasion in Journal Square. On April 30th Mr. Norman Thomas came to Jersey City. Do you recall that occasion?

A. Yes, sir.

Q. Mr. Carrick has testified here that on that evening he was at Journal Square observing; that your officers took him in an automobile and took him down to the Communipaw Ferry.

A. Took who?

Q. Mr. Carrick.

A. No, no, no, you are in error on that.

Q. Mr. Carrick so testified.

A. Well, then, I think he has testified falsely, if he has it was Norman Thomas was taken there.

Q. But he also——

A. He wasn't with him.

Q. No, he was not with him.

A. There was nobody with him.

Q. He was simply there, Mr. Carrick was merely there——

A. He was at the Square but he wasn't in the automobile and he wasn't transferred to the Central ferry; you are in error, Counsellor, on that.

Q. Well, I think, Mayor, you possibly are. I am merely telling you what Mr. Carrick testified here under oath.

A. Well, I never knew that.

Q. He didn't testify that he was in the automobile with Mr. Thomas, he did not testify to that; he testified though that he was on Journal Square, he was picked up by police officers and put in an automobile and despite his protests that he lived in Jersey City was taken to the Communipaw Ferry of the Central Railroad and there forced upon the boat and kept under observation until the boat left.

A. I don't——

Q. Do you think that is proper conduct on the part of your police officers?

A. I don't think it happened. I know very well it did not happen.

Q. Assuming that it did happen?

A. Well, assuming; why do you assume that anything like that happened? Don't be asking me those questions. Why do you pick out a citizen such as Mr. Carrick is and single him out? Just because he is a resident——

THE COURT: Here is his testimony.

Q. I single him out, sir, because your officers, according to his testimony, singled him out.

A. The only time I ever remember reading—I didn't get any official report, Counselor, was there was a picture

of Mr. Carrick in the Jersey City *Journal* and the Jersey *Observer* and he said that he got hit in the eye and I think he stated then that an officer hit him the eye and I think he was asked who was the officer and did not know. That's the only time I recall Mr. Carrick having any controversy or any trouble.

Q. Your whole knowledge of that situation up to the present moment was gotten from the pages of the Jersey *Journal?*

A. Well, that is about this boy.

Q. Yes. Assume now that the Jersey *Journal* presumably made no report of his having been taken in the automobile——

A. No, it did not.

Q. So that you may be learning of it for the first time right now, and probably are.

A. I don't see any occasion for it, Counselor; I don't see why they would do that.

Q. That is what we are curious about. It happened according to Mr. Carrick's testimony.

A. Did he testify here?

THE COURT: Yes. He testified in this way: "I was held in the car at the Central Railroad of New Jersey ferry slip until a ferry was about ready to leave. While I was waiting for the ferry two other cars bearing other people came down," and so on.

MR. MATTHEWS: Then the testimony is not, your Honor, that he was put on the ferry.

THE COURT: "When the ferry was ready to go we were put upon the ferry and there was absolutely no way that we could avoid going on the ferry." Page 401 of the record.

Q. Why do you think your police did that to him?

A. Well, I don't know; I would like to know the circumstances. I don't know what the circumstances is. I cannot answer that.

Q. By the way, were you at Journal Square that night?

A. No, no, sir.

Q. In no building on the square?

A. No, sir.

Q. Mayor, what circumstances would you think would be proper ones for your police to put a resident of Jersey City, a member of the New Jersey bar, into a car and force him to go to New York?

A. Well, it depends upon his conduct entirely. I am not familiar with his conduct: I don't know just what transpired there: I don't know anything appertaining to the circumstances. I would have to know that first.

Q. There seems to be no evidence of disorderly conduct on his part, but assume that he had been disorderly that night in Journal Square, do you think your police officers would have been justified in forcing him on a ferry to New York?

A. If he was conducting himself orderly and if he wasn't interfering with the performances of the duties of police officers, they would have no right to do that, but the circumstances may be different. I don't know. You are not presenting the whole facts to me.

Q. I am presenting them as fully as I have them, sir.

A. Well, Counselor, you are singling out a young man who was born and raised in Jersey City, whose father is a very distinguished man, and you are singling him out and you are asking me now if circumstances concerning the boy was normal and he was a bystander and he wasn't associated with this radical group that was causing the disturbances, they had no right to put their hands on him, they had no right to deport him, but if the circumstances was reversed and he was disorderly and he was conducting himself other than a gentleman and was creating disorderly [illegible] there, then that is a different picture.

Q. Well, now, assuming that he was doing all of these things that you have just said and was associated with the radical group that you speak of but was still a resident, [illegible]

ing on Gifford Avenue, Jersey City, do you think that your police had a right to take him and put him on a ferry boat and ship him to New York?

A. They do not know that he was a resident of Jersey City. They did not know the boy.

Q. He so informed them, he stated.

A. Oh, well, I doubt that. You see, Counselor, there may be circumstances surrounding this man that there may have been disorder, there may have been blows struck; the boy may have been in danger; there may have been trouble there. I am not familiar with what transpired. The police ought to explain that, if they can.

Q. Well, now, do you think that they had a right to run him out anyhow if he had been a non-resident of Jersey City?

A. Counselor, it depends entirely on circumstances. If your life was in danger, if you were in the center of the commotion and things looked bad and you were charged with saying things that I did not hear and your life was in danger, yes, I think it is smart to take it [illegible] danger zone and relieve him of any violence [illegible] treatment.

Q. You think that is within the powers of the police and the right of the police?

A. Well, I think it is discretionary in a great many cases they should use their own discretion. Police as a rule, there are very considerate and very patient in their duty.

Q. Do you remember the occasion of that visit to New York on December the 9th when you [illegible] Senator McNabb when you were asked who [illegible] whether there was an attempted invasion or not, do you remember what you replied?

A. I remember what the publication said.

Q. What did they say you replied?

A. There was a hostile group of reporters there, and they inspired me, and they started to talk about the [illegible] and I had to break away from them and get into the court

room. You see the picture they published about me, do you?

Q. Is that the picture?

A. So anything they reported on me I deny, because surely wasn't in the hands of my friends there, and I thank this gentleman sitting there, Mr. Ernst, for all [illegible]

Q. So that anything that they say you deny. Did they said anything true about you?

A. Well, occasionally, not frequently.

Q. Well, did you——

A. I am talking of the Guild here. That doesn't [illegible] the entire newspaper profession.

Q. Does that go for the "New York Times" [illegible] people on the Guild?

A. Depends on who writes it; if it is Zerner, [illegible] cause he is a member of the radical group and [illegible] proven that he is a member of the radical group [illegible] and his wife.

Q. Now, did you on that occasion, in reply to [illegible] tion to you, "Who determines whether an invasion [illegible] or not?" did you say, "I decide, I do"?

A. No, I don't remember that.

Q. And later said, "Me, right here," touching [illegible] chest, "Right here."

Mr. Matthews: I object to that.

A. That's out.

Mr. Matthews: That abuse of the Mayor.

A. That's the Newspaper Guild performing.

Q. I just want to ascertain what you——

Mr. Matthews: And you know it, too, he [illegible] and the country knows it, just a cheap newspaper [illegible] that goes for the gentleman that wrote it.

Q. Mayor, would you define Communism for [illegible]

Mr. Matthews: Now, your Honor please, [illegible] want a definition of Communism as an economic [illegible]

By Mr. Frazer:

Q. All I desire to know from the witness, and I am not suggesting that he is a Communist——

The Court: No, I don't think anyone thought you were, Mr. Frazer.

Mr. Frazer: Is merely what he means when he uses the word "Communism." That's all; what he means. So that we can have a definition and know that we are talking about the same thing.

The Court: Yes. All right.

A. Well, my interpretation, Counselor, of a Communist is a man who is subject to Russia, a radical who is opposed to the American principles and American institutions whose sole purpose is to overthrow our government, whose sole purpose is against all types of religion, all types of government, only the Soviet Government in Russia.

Q. So that unless those factors are together in a particular individual's belief, you would not say that he was a Communist?

A. Well, I wouldn't say that. I would have to see first what his contacts is, and who his associates are, and how he performs. I generally—I will judge him as I find him.

Q. Now, would you think distributing circulars about joining the CIO would constitute a man a Communist?

A. No, sir.

Q. Would membership in the CIO constitute a Communist?

A. Well, now——

Q. As such, I mean.

A. Well, just a minute. Now that depends. You have got to understand, Counselor, that the heads of the CIO outside of John Lewis, are noted Communists. The records will show that. If they will appear on this stand we will prove that by actual records. We will prove that by the statement of John Lewis himself, of John Brophy. We are

going to prove—he has got a subpœna in his hand, Mr. Ernest has now—we are going to prove that he is the treasurer of the Garland fund; we are going to prove that he contributed $25,000 to the I. W. W.: we are going to prove that they supply all the funds to the active Communistic groups in this country.

Now, if that isn't exposing Mr. Ernest as a known Communist, I would like to know what is.

Q. Well, I am glad to have your conception of how one exposes Communists. So that Mr. "Ernest" is a Communist?

A. When he gets on this stand he will be confronted with and he will be made to admit it, because if he produces his records, which I doubt that he will produce, because only yesterday Mr. Dunn jumped out of a five-story window to get away from a process server, or got down some secret staircase or something——

MR. FRAZER: May I move that that be stricken out as being purely gratuitous?

THE WITNESS: Well, you are asking me about Communists.

Q. I didn't ask you anything, Mayor, about Mr. Dunn. I don't know who Mr. Dunn is.

A. I am only telling you—Mr. Dunn is the treasurer of the Defense League, one of the noted Communist groups.

Q. Do you remember writing a letter to Congressman Jerry O'Connell?

A. Remember what?

Q. Writing a letter to Congressman Jerry O'Connell about December the 7th?

A. Yes. I thought it was a pretty good letter.

Q. Well, that's what I thought you probably did think, and that is the reason it gives me pleasure to call it to your attention. You did say in that that you could assure him that everything was under control?

A. Yes, sure.

Q. Yes. And that he was to leave everything——

A. It was humorous.

MR. HERSHENSTEIN: Let him finish.

A. (Continuing.) It was humorous, I say. Jerry was writing me a letter with twenty-six Congressmen, which Mr. Ernest had signed, and going to drive us out of the country, and I thought it was opportune for me to send Jerry the letter, just to kid him, because I thought the petition was such a huge joke.

Q. Is Jerry a Communist?

A. Is what?

Q. Is he a Communist, Jerry?

A. I think he is ten Communists.

Q. He is ten, ten Communists?

A. Ten of them, not one.

Q. He is elected as a Democrat, isn't he?

A. Well, he was.

Q. Now when you assured Congressman O'Connell that he was to leave everything to you, not to worry, that meant that you yourself would be responsible for preserving the order in Jersey City?

A. Well, I said—I told you, Counselor, that that was——

Q. Just facetious?

A. (Continuing.) —a joke; that letter was just a huge joke, the same as the petition that the twenty-six Congressmen sent to me. I thought it was the biggest joke I ever read in my life.

Q. Do you think——

A. What a nerve they had, to tell me they were coming into Jersey City to tell us how to run the government of Jersey City! They ought to have stayed in Washington and tried to run it there.

Q. Now, it seemed to you to be a joke. Do you think it was sent by them with the idea of its being funny?

A. No—oh, no, no; it wasn't sent by them with the idea of being funny.

Q. No.

A. This was one of the master m ds of Mr. Ernest, to try to scare me and my colleagues.

Q. Now——

A. He had a nice time.

Q. How do you know Mr. "Ernest," as you call him, wrote this letter? You said so several times.

A. His statement——

Q. What is that?

A. He stated in the public press, and he was in Washington when it took place, he said that he prepared his petition and got these twenty-six Congressmen to sign it.

Q. That was not written by a Guild reporter, was it?

A. I don't think so.

Q. That's the source of your information, however, what you read in the paper?

A. About Mr. Ernest?

Q. Yes.

A. Yes, sir.

Q. Were the statements in the letter signed by the twenty-four Congressmen, letter dated December 1, 1937, true?

A. Was the statement?

Q. Were the facts which they set forth—were they true?

A. No, no; it was just a radical statement coming from a group of radical Congressmen. They didn't know the contents of the statement themselves. Mr. Ernest prepared it for them. They didn't know what it was.

Q. If it had been true, that there were wholesale arrests and deportations from the city limits, of organizers, both resident and non-resident, in your city, seeking to organize workers in various industries, would you have thought that that was a funny thing, or would that be worthy of serious consideration by you?

A. I wouldn't consider it funny, coming from that source, because they don't know where Jersey City is.

Q. But as a statement of fact do you think——

A. Well, they were not familiar, Counselor, they knew nothing about it.

Q. That's what they said.

A. Oh, they said——

Q. Yes.

A. (Continuing.) —it was false, they knew nothing about it.

Q. No, they said—"We have not had an opportunity to investigate the facts at first hand, but the reports concerning them appearing in our press are sufficiently disturbing to move us to ask you for your version of the situation."

Now, wasn't that a courteous——

A. Well, I gave them my version in writing, to Jerry.

Q. But you treated it as a joke, didn't you?

A. Why, certainly I treated it as a joke. So did they.

Q. Yes. Do you think that a statement that they had seen by press accounts, upon which you rely to a large extent in getting your information, do you not?

A. Yes, but I——.

MR. MATTHEWS: Just a minute, Mr. Mayor.

A. (Continuing.) I doubt that——.

MR. MATTHEWS: There is no resolution attached by the Congress in it. This is just a letter to Mayor Hague Let him look at the letter.

MR. FRAZER: He knows the letter very well. He received it. I am perfectly willing to let the mayor see it at any time.

Q. You have no objection to my using the Congressional Record for it, have you, Mayor?

A. No, no, Counselor. Perfectly all right.

MR. MATTHEWS: Let him see it.

Q. Now, as I read the letter, they frankly stated that they knew nothing about the situation except from what

they considered disturbing reports which they had read in the press. Now one of the disturbing reports, as they considered it, was as follows:

> "We refer specifically to the wholesale arrests and deportations from the city limits of organizers, both resident and non-resident, in your city, seeking to organize the workers in various industries in that region."

Do you consider such a report, had it been true, as a laughing matter?

A. Well, Counselor, now in your statement prior to that, you discussed with me—you will permit me to explain——

Q. Surely, surely.

A. You discussed with me the distribution of circulars. That's all this Carney group was doing. Now where did the Congressmen get the word of organizing industries? That was never mentioned. That comes from Mr. Ernest.

Q. Well, as a matter of fact, didn't you understand that Mr. Carney——

A. But the papers didn't carry that, Counselor.

Q. Mr. Carney and his associates were frankly CIO organizers; you understood that, Mayor, didn't you?

A. Yes, but your question to me—you simply said, "Did you think that there was any serious development that could come out of the mere fact of the distribution of circulars?"

I said, "No."

You said, "'Were they armed?"

I said, "No."

"Then you could anticipate no serious development?"

I said, "No, I could not anticipate serious development."

That was never mentioned. Mr. Ernest put that in.

Q. Well, I don't know that he did.

A. Well, it wasn't in the newspapers, Counselor.

Q. It may not have been in the newspaper which you read, Mayor——

A. Then how did the Congressmen get possession of it? You say they learned it through the public press.

Q. That's what they say; that's all I know.

A. Yes, but it never appeared in the public press.

Q. I am assuming that when they wrote you what seemed to be——

A. Counselor, Morris Ernest was in Washington; Morris Ernest publicly stated in the newspapers that he had prepared this, and he was sicking the twenty-six Congressmen after me.

Q. Well, I don't know whether that is so or not.

A. It is so.

Q. I didn't see that account, Mayor.

A. It is so.

Q. So I am not as fully advised as you are on that subject.

A. He knows it is so. So, as I say—now he made another public statement at that very time, and he said, "The reason we want to stop Hague is because he will encourage other cities to carry on in the same manner he is carrying on, and that will be disastrous to the C. I. O. throughout the country." That was his reasons for getting these twenty-six Congressmen, why they were going to come here.

Q. But what they said was not a laughing matter; what they said they heard; was it?

A. No.

Q. Or do you consider it funny?

A. (No answer.)

Q. Did you think it was funny?

A. What is that?

Q. I say did you think it funny, that statement?

A. Oh, no, no. I don't treat it as a joke. I didn't say I did.

Q. Do you remember in that letter they quoted from President Roosevelt as follows:

"I believe that Democratic government in this country can do all the things which common sense people seeing that picture as a whole have a right to expect. I believe that these things can be done under the constitution without the surrender of a single one of the civil and religious liberties it was intended to safeguard."

Do you think that is a fair statement of democracy?

A. What is that? From the President?

Q. From the President, yes.

A. Why do you bring him in here?

Q. Because he was in this letter which you thought was so funny.

A. Did he—did he dictate that——

Q. That was quoted from the President, from his Constitution Day speech, which I am sure you must have read in the press.

A. If President Roosevelt stated that, but not in that letter, yes. I have the utmost respect and the highest respect for the President. But I don't think you should bring him in here.

Q. Well, I am only bringing him in here because he is in this letter.

A. Well, I don't think he belongs in here.

Q. Which you said was funny.

Mayor, do you remember about the time in the latter part of December when certain requests were addressed to Commissioner Casey, Director Casey, for permits for open-air meetings in Journal Square?

A. Yes, sir.

Q. Do you recall that when those permits had been applied for by mail, forthwith——

A. Well, my only notification, Counselor, was through Commissioner Casey.

Q. Yes. I understand. I am just trying to get the picture in your mind of the situation there, the permits having been requested of Commissioner Casey by letters, which are in evidence.

How was it that as soon as those letters reached Commissioner Casey's hands, a number of men calling themselves veterans had a meeting and tried to get up a mass meeting immediately afterwards? Do you recall that there was such a meeting?

A. Yes, sir.

Q. How did they come to do that, do you know?

A. Well, of course, you see we have got very alert newspapermen covering the City Hall.

Q. Yes.

A. And every important communication such as that is of course at their disposal. The press carried the receipt of that communication the very day that it was received. It doesn't require a great deal for the veterans to be aroused, particularly when there is a question like this involved, and it led from there to the veterans.

Q. Did you know that I had personally directed one of those letters to Mr. Casey?

A. I recall your letter, Counselor; yes, sir.

Q. And that my reply from him was not definite until opportunity had been given to stage the veterans' meeting?

A. Well, you see, under the ordinance, Counselor, he has three days to examine into the letter as to the contents, as to the reputation of the one who desires the permit, and if you will notice it was that three-day period that caused probably some action because of the alertness, as I said, of the newspapermen in the city hall, they published it probably the same day it was received. His rule is not to answer the letter until the three-day period has expired.

Q. Do those active newspapermen belong to the Guild that got this letter?

A. I don't know; if they do they are pretty good newspapermen.

Q. You mean that if they were known to belong to the Guild they wouldn't have access to the letter?

MR. MATTHEWS: He didn't say anything of the kind.

Q. I am just asking for the information.

A. I didn't say that, that's out. I have never had any trouble with the Newspaper Guild, Counselor, until this war started; then they all seemed to want to take a kick at me.

Q. I thought I detected some kind of bitterness in your attitude.

A. Oh, no, there is no bitterness, only I am on my guard, that's all. I smile, good fellows, I don't object to them at all, only I just safeguard what I say.

Q. Now, Mayor, coming back to my letter, I sent it over on the 23d of December. I had no reply to it until a letter dated December the 27th. That was more than the three days.

A. Well——

Q. At which time it was reported that there was to be a meeting—no, at which time he said he would have to make an investigation, and that investigation apparently took him until December 30th, my letter having requested a meeting either on December 29th or December 30th; I got a reply on the 27th to my letter of the 23d in which he says he has to make an investigation, and then I received on the 31st a letter dated December the 30th that was written on the second day of my application, and it points out there that on December the 28th, that is, the day after his first reply to me, there was a meeting of the veterans. Don't you think that that reply was held pending the meeting of the veterans?

A. Well, of course, you see your letter was quite an important letter, Counselor; we naturally—when I say "we" I mean the law department and Commissioner Casey and my colleagues, anticipated that you were preparing and laying your groundwork for court proceedings, and that you were going into action, and naturally there had to be some time given to that letter. Now, as far as the veterans is concerned, they move very rapidly; they are Minute Men. So don't be surprised if you find them in action two days after the receipt, or the publication of any communication because they can muster in three or four thousand veterans in twenty-four hours.

Q. Unquestionably.

A. They work fast over there.

Q. You have no difficulty in mustering veterans when you want them for your parades, do you?

A. No, I don't.

Q. Do you think, Mayor, that you could have prevailed upon the veterans to have been a little less aggressive at this time if you had asked them?

A. I didn't hear that, Counselor.

Q. I say do you think you could have prevailed upon the veterans to have been a little less aggressive if you had asked them to do so?

A. Well, I wasn't desirous of asking them that.

Q. You wanted them to be aggressive?

A. Oh, well, you have got to remember, Counselor, we are involved, the City of Jersey City is involved in this controversy; the people are disturbed.

THE COURT: We will take a ten-minute recess.

THE COURT: Mr. Matthews, Dean Frazer, I won't sit on Monday; it is my motion day. We will meet on Tuesday at 10:30. If there are any motions going to the subpœna I suggest they be made Monday afternoon at two o'clock.

MR. MATTHEWS: Two o'clock, your Honor?

THE COURT: If there are any. I don't know that there are, but there seemed to be some talk about it.

MR. FRAZER: Two o'clock Monday afternoon for the motions?

THE COURT: Yes. Then we will get those out of the way before Tuesday.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Resumed).

BY MR. FRAZER:

Q. Mayor, just before the recess you were complimentary enough to say that the authorities in Jersey City considered my letter as an important instrument. Were the various meetings that followed so hard upon the receipt of that letter a part of the manner in which Jersey City met the proposed invasion?

A. Well, did you say meetings?

Q. There was a meeting of the veterans on the 28th, as I recall it; there was some kind of a meeting of the Chamber of Commerce about that time, was there not? Do you remember the date of that?

A. No, I do not.

THE COURT: I think it is in evidence, Dean Frazer.

Q. And then there was a large meeting at the Armory, as I recall it, where you addressed the meeting with a nation-wide hook-up over WOR, is that right?

A. Yes, sir.

Q. Now, did those various meetings, all of which seemed to be for the same general purpose, constitute a part of the plan of action which the Jersey City authorities undertook in order to meet the invasion, as you have called it?

A. Well, the Jersey City authorities didn't enter into that at all, Counselor; that was the Chamber of Commerce and civic and fraternal organizations of Jersey City that sponsored that meeting.

Q. Well, did the Jersey City political organization enter into it in any way?

A. Not as a body, not as units; they probably appeared there in person.

Q. You do have ward clubs, don't you?

A. Yes, sir.

Q. Do you have a club in every one of the wards?

A. Not in every ward.

Q. But in most of them so-called Democratic clubs?

A. Yes.

Q. There is one in the Fourth Ward?

A. Fourth.

Q. Fourth Ward Democratic Club?

A. I don't think so. They have a meeting place but it is not a club, Counselor.

Q. Well, it is an organization called a club?

A. Yes.

Q. Of which Mr. John J. Coppinger is the leader?

A. That's right.

Q. Is Mr. Coppinger in the city employ?

A. Tax commissioner, former sheriff.

Q. Now tax commissioner, former sheriff, of Jersey City?

A. Yes.

Q. And there is a Seventh Ward Democratic Club, the North End?

A. Yes, that's McGurk.

Q. No, Eugene Ertle.

A. Eugene Ertle, city clerk, that's right.

Q. And there is the Eighth Ward Democratic Club, Patrick J. Donnelly is leader, is he not, a public employee?

A. Yes, he is a freeholder.

Q. Not directly connected with the city government?

A. No, the county government.

Q. Now I show you here three postal cards, all of them, you will notice, with the names erased, to whom they are addressed, and ask you whether you have seen any of these cards before.

A. No, but that is customary in any big affair or any big drive, that is customary, to follow that plan of notifying everybody to be present, particularly where the mayor of the city is interested. You see, in order to have it uniform you will note that every card is alike and then they are distributed.

Q. Do you happen to know who holds union label No. 4, what printer?

A. No.

Q. You wouldn't know who paid for these cards, would you?

A. Well, I don't know. You see in an affair of that kind it was contributions, it was subscriptions, and the Chamber of Commerce and the veterans and the different civic bodies and the different public bodies, if there is any there, would make contributions and pay for them in that manner. No one person paid for it.

Q. Now I show you—excuse me, I thought you had finished.

A. That's all right.

Q. I show you a typewritten—it looks like a carbon copy—paper dated December 28, 1937, entitled "Important Notice" and finishing with the words "Message from the Mayor's Office." Can you identify that as having been written on a machine in your office? There is a little typewriting at the top which is not part of the message; I don't want to confuse you with that.

A. Well, I don't know where that comes from, Counselor; that didn't come from my office.

Q. Did not?

A. No. That is—I can't positively say what the character of the machines are.

Q. Well, I was wondering whether you knew of such an instrument having been sent out, whether you directed such instrument to be sent out.

A. No, that came from the veterans, you can see that, and they assumed that the message come from the Mayor's office because of my activities in this movement. What they wanted to impress upon the veterans, and thousands of them is my personal friends, that I was interested and that this was approved by the mayor and my associates, which we did, we approved of everything now; we are not shirking any of that.

Q. Well, do you know whether such a message was sent to all of the city and county department heads?

A. Well, those are veterans, that isn't county and city department heads, this, I don't mean that.

Q. Well, that was my information in regard to that; I am not testifying for you.

A. You are asking me to testify to this.

Q. The top line is the information which I received concerning this and I want to ask you whether that information is correct or not.

A. I don't know, Counselor.

Q. You don't know?

A. No. The other is coming from the veterans.

MR. FRAZER: Now, I should like—I may have occasion to use this later and I would like to have it marked for identification.

(Marked Exhibit P-33 for identification.)

MR. FRAZER: And these postal cards, I should like to offer in evidence.

MR. MATTHEWS: No objection.

MR. FRAZER: Three altogether as one exhibit.

(Received and marked Exhibit P-34.)

MR. HERSHENSTEIN: Are you marking them separately?

MR. FRAZER: No, three cards as one exhibit, P-34.

Q. May I know who is Mr. Robert S. Carmichael, do you know him?

A. Bob Carmichael, he is assistant treasurer or treasurer of the Commercial Trust Bank.

Q. Does he hold any political position?

A. He is a county park commissioner; he is president—he was president of the Carteret Club.

Q. Now, I show you a card entitled——

A. Very prominent in Jersey City, Bob Carmichael.

Q. I show you card entitled "Patriotic Rally," signed Robert S. Carmichael; that is the gentleman you refer to?

A. Yes, he is from the Chamber of Commerce.

Q. Now, do you know whether these cards were distributed on the streets of Jersey City or not?

A. I do not, I don't think they were.

Q. Now, among these ward clubs there is also one in the First Ward, is there not, Mayor?

A. Yes, sir.

Q. And that is presided over by William J. McGovern?

A. He is a city commissioner; yes, sir.

Q. And he is president or chairman or whatever you call it of that particular club?

A. Yes, sir; he is leader of that outfit.

Q. Leader of that outfit. And are there others? We have had now—that was the first, was it?

MR. MATTHEWS: First, Fourth, Seventh, Eighth.

Q. First, Fourth, Seventh, Eighth I think we have. Are there still others?

A. Yes, there is Eleventh, Twelfth, Tenth, Ninth, Sixth.

Q. And they all have leaders?

A. Oh, yes, every ward has got a leader.

Q. And who are the other leaders in those clubs that you just mentioned, could you remember them?

A. The First is Commissioner McGovern, Billy McGovern; the Second, John Kenny.

Q. What is his job?

A. He is a freeholder. We take good care of them. The Third, County Register William J. Sullivan; the Fourth is former Sheriff John Coppinger; the Fifth is Michael Scatturchio, he has no position at all, he is the contractor.

Q. How did that happen?

A. I suppose he finds it more profitable without a position. The Sixth is Freeholder Teddy Fleming; the Seventh, there is two sections, the North and the South, City Clerk Gene Ertle, and Jose McGurk, who is city treasurer. He is our candidate for sheriff. Eighth, Doc Donnelly; we call

him Doc, he never practiced medicine, he is a freeholder. Ninth, Sheriff Parle; Tenth, Freeholder Heffron; Eleventh, Commissioner and ex-Sheriff Driscoll, and Commissioner Tatum; Twelfth, Freeholder Sweeney and Commissioner Barney Johnson. It is divided. So they are substantial citizens, all of them.

Q. Except for Mr. Scattuorchio they all have jobs.

Q. All of those leaders have been associated with you politically for a great many years, haven't they?

A. Yes, I can say I raised every one of them.

Q. You referred to one of them, I think, as being the leader of the whole lot, or something of that kind.

A. The whole what?

Q. The whole group, or some such expression. You referred to one of the leaders. I think it was Commissioner McGovern that you mentioned.

A. Well, that's of that ward.

Q. Of that ward?

A. Yes.

Q. And you are the head of the whole group?

A. Well, I think I am.

Q. Yes.

A. I don't know for how long. They turn you out very frequently in other cities. I don't know.

Q. Now who is Hugh A. Kelly?

A. That's Colonel Kelly. He is secretary to Governor Moore.

Q. And he is the gentleman who was mentioned at the bottom of this note that is called the Veteran Law and Order Committee?

A. Yes, sir; yes, sir. That's Hugh Kelly.

MR. FRAZER: I would like to have it marked for identification.

MR. MATTHEWS: What are the contents of it, Spaulding?

MR. FRAZER: It is just a notice of a meeting of the veterans.

(Marked Exhibit P-35 for identification.)

MR. FRAZER: I would be very glad to let you see it, John, if you would like to.

(Handing to Mr. Matthews.)

MR. MATTHEWS: Thank you.

Q. Now, Colonel Kelly, he presided—did he preside that night of January the 6th?

A. Did he preside what?

MR. MATTHEWS: June.

Q. No, I am wrong. Colonel Kelly presided at the veterans' meeting on December 28, 1937, didn't he?

A. Yes.

Q. Were there resolutions passed?

A. Yes.

Q. And he also led the recent parade in Jersey City?

A. Yes, sir.

Q. I mean the parade last Monday.

A. I beg your pardon.

Q. The great parade last Monday?

A. Yes, yes.

MR. MATTHEWS: We have no objection to your offering that in evidence, Spaulding.

MR. FRAZER: What is that?

MR. MATTHEWS: That one you just showed me.

MR. FRAZER: I have no objection to putting it in evidence.

THE CLERK: P-35 in evidence.

(Received in evidence as Exhibit P-35.)

Q. Now, Mayor, in your speech of January 6th, at the opening you said you wanted to thank certain persons, veterans, labor organizations, and all the other sympa-

thetic groups for their kind co-operation, and you thanked most all the people of Jersey City who had filled this great building to capacity and were standing by the thousands in the streets outside, for this expression of their loyalty and support in "my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization."

I notice that in these cards that we have been examining and which have been marked as Exhibit P-34, it states "Representatives of the Communists and other Red radical groups are attempting to invade Jersey City behind the mask of a labor organization."

Is that similarity of phrase significant as to who was the author of the cards?

A. Of course, you repeated my statement there; that referred to the public meeting.

Q. I am referring to the public meeting. I have here a mimeographic copy of the address. I assume it is accurate.

A. If you will please let me explain this——

Q. Surely. I was trying to explain what——

A. When the CIO endeavored—when the controversy started with the CIO in Jersey City, nobody treated that very serious. We did not anticipate any great trouble, and there was no great trouble. The thing didn't look to me as serious. When the seamen entered from New York the first appearance that I had, or first information, rather, was from Garfield Hays. He appeared on the scene after the seamen had disappeared, with several other associates, and he started to wrap himself up in an American flag and demand that he would be protected under that flag.

Q. I think the Court is fairly familiar with that. That was testified to very fully in another case.

A. Yes. Well, of course I would like to get this as clear as possible, Counselor.

Now, I immediately anticipated that there was something moving that had no contact whatsoever with the CIO.

The first thing I learned of it, I was being sued for $25,000 by Garfield Hays and some other two men who I never met and don't know anything about. Why they should sue me I do not know. I wasn't present on any of the occasions, I know nothing at all about what transpired on the scenes, other than I was familiar with what Commissioner Casey was doing because of conferences that we held. Then the next thing after that litigation had been aired in this court, under the Honorable Judge, appeared the invasion of Mr. Carney, and then Mr. Ernest appeared in the picture, and from that day Mr. Ernest has made it very hot, and he has thrown everything that is possible—he has injected everything that is possible that I have christened a Red invasion. Now, we had no controversy, only one day, with the CIO. Now why they had entered into this picture with all these Congressmen and all these Red men who was classified as radicals, to inject themselves into this controversy—it has been on every since. Now, the CIO has apparently disappeared, but this whole affair is continuing and has continued for the last three or four months, under the leadership of the counsellor sitting at the table there, your associate counsel.

Q. Now, Mayor——

A. Our fight is not the CIO at the present time. That's why I charge the CIO that if these men represent it, they surely must be a radical group; they surely must have Red leanings, they must be leaning in the Red direction.

Q. Do I understand that the seamen's strike had nothing to do with the CIO?

A. Oh, yes, oh, it is a great unit. Harry Bridges is one of the noted leaders of the CIO——

Q. Then I misunderstood what you said. I thought you said you had no difficulty——

A. Oh, no. I said it started with Harry Bridges, and then came over into the Carney contingent. Carney then injected himself in it and that was all brought about through the activities of Garfield Hays.

Q. I thank you for making that clear to me. Now, may I bring you back to the questions to which I was addressing your attention?

I thought you did not understand me at the time.

There is marked similarity in the language used in the various cards sent out by the Democratic Ward Clubs and the opening remarks of your address, and whether that was any indication of the authorship of the two.

A. Counsel, if I had had presented to me a card that was to be sent broadcast all over Jersey City, and I thought that it was not strong enough, and it did not make a proper appeal, I would correct it, and I wouldn't be a bit surprised that I corrected it here.

Q. Might I ask you to read this and see whether you don't remember having done so?

A. Well, I can't say that; I can't say that. I say to you that if the language is similar, it must be so.

Q. Yes. Thank you.

MR. MATTHEWS: That, of course, if your Honor pleases, goes to that stock phrase in the letter; it isn't the entire letter or the entire card; and I think the question was misunderstood.

THE COURT: I thought he asked about the Red mask.

MR. MATTHEWS: What?

THE COURT: The Red mask. Wasn't that it?

MR. MATTHEWS: Yes. It is a stock phrase about the Red mask.

MR. FRAZER: Yes, an invasion behind the mask of the labor organization.

MR. MATTHEWS: It is a stock phrase for that kind of a movement.

MR. FRAZER: I am not criticizing it. I think it is a very happy phrase.

MR. MATTHEWS: For once, Spaulding, you and I are in agreement.

Q. You just referred in your last statement to the suit which Mr. Hays had instituted against you.

A. I just referred to what, Counselor?

Q. To a suit which Mr. Hays had instituted against you.

A. Yes.

Q. A $25,000 suit?

A. Yes.

Q. And the matter which was aired in this court was a suit in which the American Civil Liberties Union and the Boot and Shoe Workers Union, Local No. 454, Mr. Benjamin Burke, and one Mary Gresack and others were the plaintiffs.

Can you tell me whether the Boot and Shoe Workers Union, Local No. 654, was an A. F. of L. union?

A. I don't know.

Q. You don't know.

A. No. You see, there was no controversy as far as I was concerned about some little affair that was taking place at Exchange Place, Jersey City. I referred to Garfield Hays injecting himself over at the corner of Henderson and Fifteenth Streets, where the steamship companies are located. I know nothing at all about that. I know that that is the suit that he started with me, but I know nothing about it. Those two locations, Counselor, is about two and a half or three miles apart.

Q. I see. But now you made a pretty broad statement some time ago, that you never had had any labor difficulties in Jersey City. Wasn't there a period some years ago when the Pulaski Skyway was under construction, some difficulty with the employees of the McClintick Marshall Company, or one of those concerns?

A. Yes, sir.

Q. Wasn't that a labor difficulty?

A. Yes; a serious one.

Q. Very serious, wasn't it?

A. Yes, sir. There was a man killed, lost his life there.

Q. My recollection was that there was a continuous small army of police around there, was there not?

A. A small army of who?

Q. Of police.

A. Oh, yes. They had a temporary station there. They were stationed there permanently.

Q. Yes. So that there had been. I just wanted to call your attention to what I thought was an inaccuracy on your part.

A. We ended that trouble very abruptly, counsellor. There was a man killed, and we arrested 27 of the ringleaders.

Q. Yes. I remember it was quite serious.

A. And that ended the trouble, because the policemen took the whole matter in their hands.

Q. Now you, in your address of January 6th, thank, as I called your attention, the various persons for their "expression of loyalty and support in your efforts to protect our city from invasion."

Now, will you tell me of what those efforts consisted?

A. Well, I—will you repeat that again, Counsellor? I am just a little——

Q. You thanked them——

A. You mean my public address?

Q. Your public address, yes. This is your regular address——

A. Yes.

Q. —at the meeting in the armory that night.

A. Now, will you repeat that?

Q. Surely. You say here "I thank most of all the people of Jersey City," and so on, "for their expression of their loyalty and support in my efforts to protect our city from invasion by the Communists," and so forth.

Q. Now, would you tell me in what your efforts consisted that you were now thanking them for having supported you in?

A. Well, of course, in a movement of this character, particularly of such great importance that one who is the official head his principal desire is to have cooperation of the whole community, the people in general on every occasion that I have ever called upon the people of our city they have responded, and I was then thanking them for their presence, in the call to the people of Jersey City to present themselves and by their presence file a protest and to stamp their approval of the conduct of their public officials and of the civic bodies.

Q. I understand that. And you called attention to the fact that that is a demonstration of their support of you in your efforts to protect the city from invasion?

A. Of the movement.

Q. Well, now, I want to know what the efforts were which you made to protect the city from invasion, that is what you are thanking them for the support on.

A. Of course, when you find Harry Bridges endeavoring to come in there and tear things apart, similar to what he done on the West Coast——

Q. Well, has Harry Bridges ever been to Jersey City?

A. No, he directed his influence from New York.

Q. No, but he wasn't over there, was he?

A. But two of his strong-armed men, two of the noted killers now confined in the State Prison of Trenton for fourteen years——

Q. That was one of the efforts that you——

A. No, no, wait now.

Q. I am trying to get your efforts.

A. When you are confronted with conduct such as that and then a few weeks after the occurring of the CIO invasion, this is the CIO under the Bridges, naturally a man should be disturbed over the character of a man like Bridges entering the city or directing his forces to invade the city, and then the declaration of Mr. Carney, who is the Regional Director, that he was going to come into Jersey City law or no law, whichever every daily and every large newspaper

of the country carried, and probably at the time that they were due there there was probably one hundred newspaper men and cameramen there waiting to see just what the commotion was, and when I discovered that I was being confronted with the Civil Liberties and with all the other isms that goes with the Civil Liberties, I realized that I was confronted with a serious problem.

Q. I understand, but——

A. And naturally I was proud and pleased that the people responded to my call in my efforts to stamp out this invasion.

Q. I understand fully your feelings, Mayor, but what I wanted to know, which you haven't yet told me, is what you did, in what your efforts consisted, that you are so grateful for the support on, what did you do, what?

A. There was nothing on my part other than to engineer or try to advise whenever the occasion would warrant it; the police was handling the law and order side of the question and the people was resenting the invasion and the conduct of these people and naturally my instructions to the various groups, that is, the officials, was that they perform their duty as best they could.

Q. Well, now, what was their duty, did you define that in any way?

A. The police duty?

Q. Did you define that for them?

A. Oh, the police duty is defined without any explanation on my part, Counselor, the law is there. They are trained men, they know just what their duties are.

Q. Yes, you didn't really make any efforts at all, did you?

MR. MATTHEWS: I object.

A. Oh, plenty of effort.

Q. I want to try to find out what they are.

A. Well, a man by day and night trying to work out this whole question, I think there is plenty of efforts displayed there. Do you want me to explain any one individual act of mine?

Q. Yes, I would like to get a general picture of what you have done.

A. My public address at this large drive was one individual act; my conferences with the various heads of the various departments that has supervision over these disorderly conditions that may arise is two, and my complimentary remarks to the Chamber of Commerce and to all the other civil bodies is three, and I think that is sufficient.

Q. And the editing of the cards would be four?

A. I don't say that.

MR. MATTHEWS: I object, your Honor please; there is no statement that he edited the cards.

A. I wouldn't say that.

MR. FRAZER: I beg pardon, I understood him so to say.

MR. MATTHEWS: Not edited; he may have made corrections.

MR. FRAZER: Corrections. Very well.

Q. Was the veterans' meeting of December 28th one of your efforts?

A. No, I told you that long ago, Counselor, that was the mere publication of an application, that you or some other, Jerry O'Connell or Mr. Bernard or some of them had made that would arouse their Americanism, and they started themselves. You don't have to urge those men on.

Q. Mayor, do you approve of the rental of halls to Reds?

A. There has been quite a discussion about that, Counselor, in the public newspapers and the complaint of Mr. Ernst and of his associates,—I do not approve of any un-American groups coming into Jersey City. That is clearly demonstrated by my attitude.

Q. Now, won't you tell me what you mean by un-American?

A. Well, who is endeavoring to overthrow our Government, who is endeavoring to inject immorality into some talks of that character, that is another group. I am not charging that as the un-American group. I don't think it is patriotic, I don't think it falls within the performance of my duty to encourage halls to be rented to undesirables, men or groups who take it upon themselves to assail our Government and who is in favor of the overthrow of our Government.

Q. Well, now, do you conceive it as part of your duty to discourage the granting of halls to people of that type?

A. No—a mere expression from me, Counselor, is sufficient to men who has been associated with me, men who has lived in the city all their lives and who on numerous occasions have had talks and association with me, that is sufficient for them to feel that they are not working within the proper scope, if they encourage groups of that kind, when they know that the officials of Jersey City are distasteful to that type of gatherings forming in Jersey City.

Q. So that the mere expression of an opinion by you that the renting of halls to such persons would not, in your opinion, be a desirable thing, would be sufficient, would it not, for those people to fear——

A. Yes,—not fear now, don't put it in fear.

Q. Very well, let me withdraw that word. To make these people believe, is that all right, that the renting would arouse the resentment of the city authorities?

A. I could say, Counselor, that nearly every man who is the proprietor of a hall—as a rule a hall carries with it a saloon. I have been always active ever since Prohibition to restore liquor and to repeal Prohibition, and naturally I was a favorite amongst the liquor interests, that is, the men who desired to open cafes and restaurants and things of that kind. Now I become very well acquainted with all the proprietors of the halls, I presume I have talked in every hall in Jersey City fifty times during my political

career. That brought me in personal contact. They have on numerous occasions business at the City Hall on little minor affairs that they are interested in. That brings a very close relationship with the officials, and these proprietors. That being so, it does not require any force, Counselor, for them men to know just what the Mayor desires or what their friend desires. I never talked to a saloonkeeper or to a proprietor of a hall on this occasion, I never even intimated to any of them. Now, it has been charged that the police has tampered with them. I have failed to find any of that. It is natural that these charges are going to be made and they are going to be in circulation, but let me say this to you, Counselor, if it is permissible——

Q. Certainly.

A. We have never denied a permit in Jersey City since I was Mayor with the exception of only one, I think, until this controversy took place. We do not desire to stop anybody. I have issued on an average—when I say "I," the city government issued on an average three or four thousand permits to our opponents, our political opponents. One man even spoke under my window on three different occasions and the permit was granted because I never felt that anybody should be denied the right to talk. This question of free speech, Counselor, is not involved in this controversy. I want you to know that.

Q. Well, I am very glad to be assured of that, Mayor.

A. Let me complete now, Counselor,—just a minute. You started me now, I ought to be permitted——

Q. I haven't interrupted you, have I?

A. No. Now, we have never denied a permit until this controversy arose, the first application that we received concerning this trouble that we are confronted with today. Arthur, I think, Garfield Hays was stated as one of the speakers, Arthur Baldwin was the other.

Q. Roger Baldwin?

A. Roger Baldwin. And I think Mr. Ernst was the other, I am not sure. Now, on top of all this controversy

and all this trouble and all this uprising the public body which I have the honor of presiding over thought that that was a serious, dangerous practice for us to go in in the face of all this uprising and in the face of all this unrest that was appearing in Jersey City, for us to let this group come in here and start these attacks upon the Government and upon the city officials; and the result was that this whole controversy has taken place only since this trouble has started. Now, I have no desire to stop anybody from talking but in the face of this trouble I cannot surrender, the City of Jersey City cannot surrender and permit this invasion of these men. Do you think that Bernard is a proper man, even though he is a member of Congress—now, just a minute, Counselor,—that was the honored guest at the Communistic parade on May 1st, only last month?

Q. Now, do you know that, Mayor?

A. Just a minute.

Q. The papers again.

A. Just a minute, Counselor. When you see his picture, a photograph, and published in our daily newspapers, that is sufficient for me.

Q. I don't know the gentleman.

A. Oh, I don't know him either. Now, do you think that he is a proper man to come into Jersey City under the circumstances? I do not.

Q. Well, I don't suppose it makes much difference what I think.

A. Do you think Jerry O'Connell is, when he and Bernard went over to Red Spain as representatives of the Communist Party and their expenses paid by the Communist Party, do you think they are proper men to appear upon the streets of Jersey City?

Q. Do you know that? That that is a fact, that their expenses were paid, do you know that that is a fact?

A. The public newspapers carry it. Bring Jerry O'Connell on here, Counselor, and let him answer that for himself.

Q. I am not interested in Mr. O'Connell. You seem to be much more interested than I am, Mayor.

A. I am not worried a particle, I am not worried a particle. Of course, if it is distasteful for you to hear about Bernard, I am sorry.

Q. Not at all, if it gives you any pleasure.

A. But you must remember we have to expose this, Counselor, we cannot suppress it.

Q. What is it you are trying to expose?

A. I am trying to show that this CIO is governed by Communists of this country; I want to show that the movement is Communistic.

Q. Now, do you think that you show that by having your police attack men for distributing circulars, does that establish anything of that sort?

A. No, that's minor, Counselor, that is only minor.

Q. Do you establish it by having your police rush Mr. Thomas out of the city?

A. That is minor too; that depends upon circumstances. Don't you think the police would display sound judgment if they thought there was danger of this man meeting with violence? You would think it was sound judgment if you thought a man's life was in danger.

Q. I am trying to ascertain from you how by means of forcing people into automobiles, taking away their circulars, preventing their having permits, you are exposing the control by Communists and Red groups of the CIO organization. I don't see that it has any relevancy. I would like to have you explain that to me.

A. Depends on circumstances, Counselor. If the distribution of circulars has caused any disruption or caused unrest in the neighborhood in which they are appearing and that there is protest and complaints from the people to whom these circulars were entrusted on their person and that the remarks of the distributors are of an insulting nature, I say that that warrants the action of a police officer.

Now, to arrest him would only mean what they desire. Their whole stock in trade is to appear in police courts for publicity purposes. For Mr. Thomas to appear at a gathering where riots has been apparently ready to explode, and Mr. Thomas confronted with a high police official and asked not to deliver his public address there, first without a permit and second that there was danger surrounding his presence, I don't see where there was any great outrage committed when that man was removed and told to go back to New York.

Q. No, but did that show the connection between the CIO and the Red organizations? That was what I wanted to find out?

A. Yes, yes, I explained——

Q. How was that?

A. I explained that at the beginning when this CIO trouble started, who made their appearance? Under the leadership of the learned counsel, along comes Roger Baldwin, along comes Garfield Hays, along comes—and, remember: do you realize that this same man, Norman Thomas—his picture appeared in the *New York Times* with his clinched fist, making a Russian salute—do you realize that his utterance on that day said that he was coming to Jersey City and for them to not to display the Red flag?

Q. Well now, would you stop somebody from doing a "Heil Hitler"?

MR. MATTHEWS: That wasn't a "Heil Hitler." He said clenched fist.

MR. FRAZER: No, I am asking him whether he would stop anybody from doing a "Heil Hitler."

A. Singing the nationale—does that indicate that this man is a communist?

Q. I don't know what it does; I am sure.

A. Well, Counselor——

Q. I don't know.

A. You are endeavoring to try to get the facts. If the people are aroused by the presence of this man, because of his conduct and because of his manner in which he has conducted himself at a May Day parade, which is Communistic, in Madison Square Park in the City of New York, don't blame me for that.

Q. Well, Mayor, may I ask you this: you said a little while ago that you thought on account of your long connection with public affairs in Jersey City, and the affection which the people there held you in, that in the matter of renting halls, let's say, the persons who owned halls would only need a suggestion from you. I mean——

A. No——

MR. MATTHEWS: I object to that.

MR. FRAZER: One moment, one moment.

MR. MATTHEWS: That isn't his testimony.

Q. Not a suggestion to them directly.

A. No.

Q. But——

A. If they find that I am in a controversy——

Q. Yes; they would deny the halls, just automatically, wouldn't they?

A. There is no question about that, Counselor; there is no question about it.

Q. I am not trying to misstate it. I am just summarizing what you said.

A. No. I am free to say that I feel that the proprietors of the halls in Jersey City would not endeavor to offend the officials of Jersey City, knowing that.

Q. Yes. Now——

A. Of course, we had a controversy—the communists had rented a hall in Jersey City, and when the proprietor

learned who they were, he had accepted a deposit of $5, he returned the deposit and said that because of the fact that they were the communist group, that he could not rent his hall, and he hereby cancelled it. They took that case before Vice Chancellor Fielder, and Vice Chancellor Fielder ruled against us and said that we have no right to stop any private hall gathering, and since then we have never attempted —even on that occasion we didn't attempt. That was a proprietor who returned the deposit.

Q. Well now then, as I understand it——

A. And, keep this in mind, Counselor: CIO had public meetings in our halls. I have seen the CIO having a public gathering with 1500 or 2000 people.

Q. Oh, yes. They have so admitted. They said up to a certain date they had no difficulty.

A. Up until this trouble. Now, I didn't stop them from coming into halls. They have three headquarters in Jersey City, and they have never been molested; irrespective of what they said here I say to you that nobody has ever molested them. They are welcome in Jersey City as long as they are lawabiding. Nobody has ever molested them. They go about their business. They transact their affairs. Nobody has ever lifted a finger in Jersey City against the CIO, until Carney's statement. That is, when he said he was coming to Jersey City, law or no law.

Q. Did you know that Mr. Samuel Macri was assaulted in Jersey City on May or June—what was it? What was the date of that meeting? May 27th?

A. Are you talking about the Jerry O'Connell affair?

Q. Yes.

A. At Pershing Field?

Q. Yes. Did you know that Mr. Samuel Macri, an organizer for the CIO was slugged there?

A. Well, I don't know.

Q. So that he was unconscious for nearly twenty-four hours?

A. Well, how did he get out of there? The newspaper account says he walked out of there. How was he unconscious for twenty-four hours?

Q. Well,——

A. Does he walk in his sleep?

Q. The newspaper account apparently was inaccurate, then?

A. Well,——

Q. Mr. Macri himself testified that he was unconscious, and the next thing he knew he was in a hospital. How did he get there?

MR. MATTHEWS: I think the testimony ought to be before the Mayor. Macri testified this morning he didn't know who hit him.

A. If he was in Jersey City he must have been very unconscious when he found his way over here.

Q. I simply wanted to inquire whether you would consider that being molested?

A. I am only talking from the newspaper account.

Q. Yes.

A. Which says he was hit on the chin and he knew nothing until he woke up in this hospital.

MR. MATTHEWS: And he didn't know who hit him.

A. (Continuing.) Well, how did he find the hospital?

Q. I don't know.

A. I don't know either.

MR. MATTHEWS: A radio beam carried him, perhaps.

A. (Continuing.) He surely must not have been telling the truth.

Q. He was obviously laid up, and I was wondering why he wasn't down at the Jersey City Hospital; but he wasn't

A. I don't know. There was one man there at some celebration or some affair who says he was hit, and he went over to the maternity hospital, and they wouldn't take him there. Why should they take him in the maternity hospital?

MR. MATTHEWS: He wasn't going to have a baby, your Honor.

A. (Continuing.) He went away then. There was the big Medical Center next to him, and he wouldn't go in there.

Q. Well, perhaps he was a little dizzy from not knowing which building he was going to. Was anything ever done about Macri's assault? Was it ever investigated?

A. I don't think, Counselor, it was ever officially reported.

Q. Really?

A. I don't think so.

Q. There were a great many policemen there that night, weren't there?

A. I don't know.

Q. 500, I believe.

A. Well, the police pretty well protect everybody.

THE COURT: 10:30 Tuesday morning. You want the witness to return?

MR. FRAZER: Yes.

THE COURT: I am sure the Mayor wishes to return.

(Adjourned to 10:30 A. M., Tuesday, June 14, 1938.)

Tuesday, June 14, 1938.

Case continued.

Appearances as before.

FRANK HAGUE resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

THE COURT: Have you the last question?

MR. FRAZER: The last question was something of a joke, your Honor, something about having a baby; I think I can pick up the examination.

THE COURT: Do you want to see it, Mr. Frazer?

MR. FRAZER: No, I have a copy of it, sir.

Q. Mayor, you have testified on a number of occasions that you got your information from the pages of the *Jersey Journal*. Right?

A. I didn't say *Jersey Journal*,—the newspapers.

Q. But you did specifically mention the *Jersey Journal*.

A. Did I confine it to the *Jersey Journal?*

Q. No, I don't think you confined it to the *Jersey Journal* but you did refer on a number of occasions to the *Jersey Journal* as being the source of your information. Did you see last Friday evening's *Jersey Journal?*

A. I think I did. I read it as a rule every night.

Q. I picked this up after court Friday afternoon and noticed an article in here about Borough President Harvey. Did you read that, his commendation of you, as you and he being the only two——

A. I think I read that in one of the New York papers.

Q. But you did see the statement of the Borough president?

A. Yes.

Q. You were asked whether you agreed with the statement that the only two men in the east who think more of their country than they do of themselves were Mr. Harvey and yourself; is that right?

A. Am I quoted as saying that?

Q. Yes. I will read you what it says:

"Mayor Hague said he agreed with President George U. Harvey of Queens, New York, that he and Hague were the only two men in the east who think more of their country than they do of themselves."

Are you correctly quoted there?

A. No, I don't think I made that remark about we are the only two men in the east. I think that's an error, Counselor.

Q. Well, that was the statement, however, wasn't it, of the borough president?

A. I think it was.

Q. Yes.

A. I didn't make that.

Q. Now, did you read the rest of the borough president's remarks?

A. What do you refer to, Counselor?

Q. Well, that was a general statement which he made at that time; when he said that "I am for Hague one hundred percent. We need more like him." Then he went on and made the statement in which those other words were a part.

MR. MATTHEWS: I object. I ask that the witness be allowed to read the statement, if he is going to ask whether he recollects anything about it.

Q. Well, I show you a statement here——

MR. MATTHEWS: Read it, Mayor, carefully.

Q. —that appears in the *Jersey Journal* of last Friday. You did read that, didn't you, sir?

A. Well, what about it, Counselor? What do you refer to?

Q. Well, I was wondering whether you agreed with the principles that he set forth in that statement.

MR. MATTHEWS: I object, if your Honor please, totally immaterial to this issue whether the Mayor does or not.

THE COURT: What are the principles?

MR. FRAZER: Well, Mr. Harvey states certain things about how he believes communists should be handled. I want to find out whether that is the Mayor's conception too.

MR. MATTHEWS: I object to that. It is immaterial to this issue whether he thinks what Mr. Harvey says is correct or not.

MR. FRAZER: It is a frank statement of attitude toward communists.

A. Well, I prefer you to ask me that direct. Why do you want me, to—why do you refer to Mr. Harvey as to whether I approve of his views or not?

Q. Because it seemed to me that there was an expression by you that Mr. Harvey and you were in agreement fundamentally upon the principles of this case.

MR. MATTHEWS: No, that's not——

Q. And one of the principles I wanted to see whether you were——

MR. MATTHEWS: That is objected to; there is no such statement by the Mayor, that he is in agreement with Mr. Harvey about the fundamental principles——

THE COURT: Mr. Frazer, read what Mr. Harvey said and ask the Mayor if that is his view.

MR. MATTHEWS: Your Honor will allow me an exception to that?

THE COURT: Yes.

(Which exception is hereby allowed and seal accordingly.)

(Sealed)

MR. FRAZER: Very well, sir.

Q. "I am for Hague 100 percent. We need more like him," Mr. Harvey shouted, first before 100 members of the Civic League of Glendale, and again a few minutes later before 400 men attending the annual convention of the Queens County Council of the Veterans of Foreign Wars. "That locates them." Mr. Harvey's support of Mayor Hague was followed by a denunciation of communism and of a number of New York City officials, including Mayor F. H. LaGuardia, District Attorney Thomas E. Dewey, Borough President Stanley M. Isaacs of Manhattan, who he charged are affiliated with the American Labor Party, which is a communist adjunct, and appointed A. L. P. members to office.

MR. MATTHEWS: Now, your Honor will see that to ask Mayor Hague whether he agrees with that——

THE COURT: I thought there was something about the treatment of communists

MR. FRAZER: Well, there is. I thought your Honor asked me to read the statement. I will skip a little.

Q. "'During the campaign last year the American Labor Party came to me and wanted to give me their support. I told them I didn't want their votes. There are only two men in the East who think more of their country than they do of themselves, they are Mayor Hague and myself.' Mr. Harvey charged that New York City municipal colleges, as well as the government, were honeycombed with Communists. 'I have no objection to Dictator Stalin in Russia, Dictator Hitler in Germany and Dictator Mussolini in Italy,' he said, 'that is not our business. As for those who don't like our government, why don't they go back to Russia or Italy or Germany? Why don't they go back where they came from?' ". Do you agree to that?

MR. MATTHEWS: I object to that, totally immaterial, whether he agrees with it, and why is the statement of Borough President Harvey made in New York relevant to this issue?

THE COURT: I cannot see what Mr. Harvey has to do with it. I think you can ask the Mayor what his views are. Ask him in direct form.

Q. Do you believe that persons who believe in the doctrines of Stalin, Hitler and Mussolini should go back to those countries?

A. Do I believe what?

Q. That persons who believe in the doctrines of Stalin, Mussolini and Hitler should go back to Russia, Italy or Germany?

A. I believe that anyone who comes here and is discovered displeased with the methods of our country and our government, and feel that it is necessary for them to set themselves up as objectors to the form of government that we enjoy here and find that this country is apparently not pleasing to them, they should be driven back, not go back, driven back.

Q. Driven back?

A. Yes, sir.

Q. Suppose they were born in this country, should they be driven back then?

A. Well, I think we ought to establish a camp in Alaska there and house them there and keep them there away from the American people, if they don't believe in our form of government and are opposed to every move of our form of government. I think there should be a remedy for that.

Q. You don't think they should be able to urge a change in the form of government?

MR. MATTHEWS: Now, I object to that question, if your Honor please, and Mr. Mayor, it is not fair to the witness, "urge in the fashion of revolution" or "urge in the making of statements about defects in the

running of the government" or "urge about something that is actually wrong in the running of the government?" There must be a distinction; Mr. Mayor, what you said is you would put in Alaska all of those fellows that want to destroy America by revolution and in that your counsel agrees with you.

Q. Well now, referring a moment to Mr. Harvey and his statement, he said that the public officials in New York City looking for votes were responsible for the growth of the Communist Party here. Do you think that is true?

MR. MATTHEWS: I object, if your Honor please. How is that material to this issue, what the officials in New York think, or for the Mayor to interpret their thinking?

THE COURT: I don't see how that is material here.

Q. Well do you believe, Mr. Mayor, that the search of public officials for votes is responsible for the growth of the Communist Party?

MR. MATTHEWS: I object, if your Honor please, as immaterial to this issue.

THE COURT: It seems to me that calls for speculation.

MR. FRAZER: Well, may it please the Court, the Mayor's testimony has related to a very large degree to communists, and people of that sort, and I am trying to ascertain what his attitude is toward those whom he has thus described.

MR. MATTHEWS: But he is trying to do it out of the lips of another.

THE COURT: Ask him the direct question then.

MR. FRAZER: I did, I thought.

THE COURT: No, you put in something about New York City.

MR. FRAZER: No, I changed it, if your Honor will recall.

THE COURT: Oh.

MR. FRAZER: And put it directly: whether he believes that the search by politicians for votes is responsible for the growth of the Communist Party.

MR. MATTHEWS: Now, that, of course, if your Honor please, is irrelevant to this issue.

THE WITNESS: Counselor, I would like to be permitted to answer that question.

MR. MATTHEWS: Very well, Mr. Mayor, go ahead.

A. There is nothing that I have any hesitancy in expressing myself in regards to anything concerning labor. Anything concerning any groups, I have always assumed that if it was unAmerican, I should never hesitate in expressing myself, and I have never hesitated in expressing myself, Counselor. I do feel that it is an error for public officials to be seeking these votes of the American Labor Party. I have branded the American Labor Party as being a communistic group. I can prove that they are communistic. I can prove that every one associated with the group here in New Jersey that I charged was an adjunct to the communistic group, that the American Labor Party that was organized in New Jersey was nothing pure and simple but a communist, and I wanted nothing to do with it. So much so that they have declared now that they are not going to inaugurate a ticket at the general election. They are going to select their own choices; they don't dare put in a ticket at the general election. That's my expression.

Q. Now, do you believe——

A. I would like them to put a ticket in and let the people determine and let the people have to take sides, as to who they wish to vote for, whether they wish to vote for a hundred per cent. Americans or whether they wish to vote for the left wing of this group.

Q. Now do you think that the scramble for votes at the election will lead to candidates going to support those elements that you——

A. No question about that. The candidates that seek that type of support should be defeated.

Q. Now, as to the members of organizations, do you remember that Mr. Harvey said they gave communists a dose of castor oil in addition to the rubber hose in Italy, and reminded his hearers that he was among the first in New York to advocate the use of rubber hoses on communists? Do you remember that in the statement?

Mr. Matthews: Now, if your Honor please, how is that material.

A. No, I don't.

Q. Does that express your belief?

A. No.

Q. As to the treatment which should be accorded to them?

A. I believe in lawful procedure, Counselor; and of course—let me state if it is agreeable?

Q. Surely.

A. As to the members of the Labor Party, when the American Federation of Labor in New York withdrew their support from the American Labor Party, of course that withdrew an element that has always demonstrated in my estimation their true Americanism, and I can say now that there is a great—thousands of members of the American party throughout this country, American Labor Party, that are absolutely good Americans, true Americans. They are being deceived, the same as I have expressed myself on the CIO. We have members of the CIO that's true, real true Americans, but they are being misled; they will wake up to the fact that they are being misled, and I hope to be one of the persons who is going to enlighten them as to their mistake.

The Court: Will you excuse me a moment, Counselor?

(At this point a short recess was taken.)

Q. Mr. Mayor, do you know a man named Brophy, who is a member of the Catholic War Veterans of Jersey City?

A. Jersey City boy?

Q. Yes.

A. Yes, sir.

Q. They say he is a WPA worker; is he?

A. I don't know how he is employed. Dr. Brophy is his brother.

Q. You remember seeing a statement by him that the Veterans in the assembly that they were to make in Journal Square should come armed with rubber hoses?

MR. MATTHEWS: Now, if your Honor please, how is this material or relevant to this issue——

A. Yes, sir.

MR. MATTHEWS: —what people said?

MR. FRAZER: The Mayor answered it; he said yes, sir, he remembered the statement.

MR. MATTHEWS: Mr. Mayor, this is irrelevant to this issue and at this point of the testimony I ask that no irrelevant testimony be allowed, that the witness be instructed to wait until counsel's objections are lodged, because after all, Mr. Mayor, that is not relevant, what somebody else may have said. However, I will let the question remain in so far as no objection goes to it in the record.

Q. He has nothing to do with the Brophy whom you mentioned earlier in your testimony in connection with some of the CIO leaders, has he?

A. No, sir.

Q. Now, as a matter of fact, did the veterans appear that night with rubber hoses?

A. I do not know, I don't think so; I wasn't there.

Q. As a matter of fact, they didn't from the newspaper report, did they?

A. No, they didn't. That is a statement, as I assume, from a man who is enthused, a little bit more enthusiastic than the average man, and they make statements like that. They don't ever amount to anything, Counselor. They don't disturb me because I never anticipated any disorder.

Q. Well, as a matter of fact, there was some request made that they would not bring rubber hoses, wasn't there?

A. Well, it was laughed at seriously; he realized that it was a joke himself.

Q. But he was requested not to and the veterans were requested not to?

A. There was public statements along that line by Commissioner Casey and them.

Q. Yes, that is what I understood. So that the mere statement by the municipal authorities of opposition to that kind of conduct was sufficient to control it, was it not?

MR. MATTHEWS: I object.

A. I imagine so.

Q. Frank H. Eggers is your nephew and secretary now, is he not?

A. Yes, sir.

Q. He is quoted as having said——

MR. MATTHEWS: I object, if your Honor please.

MR. FRAZER: Well, I think this is——

MR. MATTHEWS: How can——

MR. FRAZER: —expressive of policy.

MR. MATTHEWS: —what others said in newspapers have any effect upon this case? Not relevant to this case.

THE COURT: Ask the direct question, Mr. Frazer.

MR. FRAZER: Well, I don't think I should be so confined. Here is a man who stands in very close relation with the Mayor, whose utterances in the public mind

will be assumed to have been more or less inspired, who should be expressive of the policy of the office which he is representing in the capacity almost of alter ego in certain relationships. I want to call the Mayor's attention to the statement which he is alleged to have made to ascertain whether that is the official policy.

THE COURT: Then ask the direct question.

MR. MATTHEWS: Is it the official policy, should be the question.

Q. Was there any suggestion made as a result of the so-called CIO invasion and the ejection of the unionists from the city? "If you come back it won't be on a ferry boat that you will go back on; you will go onto the dock and into the river."

A. Who said that?

Q. Judge Eggers is alleged to have said that.

A. Would you repeat that, Counselor, so that I can——

Q. Yes, sir. Perhaps if I gave you the——

A. Is this an address he is delivering or a statement?

Q. This is the newspaper account, which says "Former Judge Frank H. Eggers, private secretary to his uncle, Mayor Frank Hague, last night described the incidents surrounding the CIO invasion," quoting the word "invasion," "of Jersey City and the ejection of the unionists from the city. William J. Carney announced he would lead three thousand men into Jersey City and take over industry on November 29th. Eggers told Division 18 of the Auxiliary of the Ancient Order of Hibernians when he came up Montgomery Street with those pickets they were met by your police department who escorted them out and said, "If you come back it won't be on a ferry boat you will go back on; you will go onto the dock and into the river."

A. Well, Judge Eggers didn't say that; he said the police——

Q. The police did.

A. Oh, I don't know anything about that.

Q. Well, do you think Judge Eggers is properly quoted and was he properly quoting the police?

A. He may be, I won't dispute that.

Q. You wouldn't dispute that?

A. No.

Q. You knew he was going to make that address, didn't you?

A. No, he makes numerous addresses and I approve of everything he does say.

Q. Now, earlier in your examination, Mayor, I called your attention to a newspaper article in which you were quoted and you indicated that you perhaps were misquoted from that particular paper, so that I have a different clipping from the *Jersey Journal* of December 9, 1937, in relation to the same subject. "Mayor Frank Hague of Jersey City said today he regards as an attempted invasion the efforts of the Committee for Industrial Organization to organize Jersey City workers. Asked who decides the question the Mayor said, 'I decide, I do.' Then tapping his forefinger on his chest he added, 'Me, right here.'"

Now, calling your attention to the fact that that appeared in the Jersey Journal under that date would that refresh your memory as to whether you said those words or not?

A. No, that is the same article, Counselor, that I referred to. I said that I was dealing with a hostile group of newspaper men who was endeavoring to ascertain from me something that would be beneficial to their group, who was the CIO, as I viewed it, and this is a reprint. There is thousands of papers carried that; that went over the A. P. wires, and the same thing applies to all the papers.

Q. So that doesn't refresh your memory?

A. No.

Q. In regard to that incident?

A. That's just an A. P. wire that was sent from New York.

Q. Now, Mayor, you never denied the report that was thus widespread through the associated press, did you?

A. No. I make it a practice that the less said about those types of misquotes, the better for everybody concerned, because you never get any of the best of it, you can't catch up with a story of that character, Counselor; so I left it unsaid, unanswered, rather.

Q. Well, is it a fact that you were the one who decides?

A. One what?

Q. As you were quoted as having said? Is it fact?

A. That's true.

Q. Now you have also referred on numerous occasions to Mr. Carney's so-called invasion, 3000 strong.

A. (The witness nodded.)

Q. And I call your attention to a clip from the *Jersey Journal* of November 24, 1937. That was five days before the so-called invasion.

A. (The witness nodded.)

Q. Which took place on the 29th, as I recall?

A. Yes; whatever the dates are.

Q. In that statement from the *Jersey Journal* it says, "According to present plans some 2000 CIO organizers and workers will meet in Jersey City and will march to a number of the larger industrial plants for the purpose of distributing circulars."

You notice it says 2000 and not 3000, as you have many times said.

A. (The witness nodded.)

Q. And if 2000 men came, just for the purpose of distributing circulars, you wouldn't consider that an invasion, would you?

A. Yes, yes, yes.

Q. Would that——

A. That's a mild statement, to what the original statement was, Counselor. The original statement appeared in the *Bergen Record*, who was present the meeting with Mr. Carney. It was the *Bergen Record;* if he refers to the *Bergen Record,* if you have that——

Q. I haven't it in my files. Have you it, sir?

A. No. You could find out just exactly as to the young man who was present and who took it in shorthand, just what transpired. It was the *Bergen Record* that we were guided by. It is from the *Bergen Record* that all these other papers copied their stories.

Q. Well, now, why did you give that credit to the *Bergen Record*?

A. Because they were the original paper that broke this story. They were the first ones to break it.

Q. Well, now, in the *Jersey Journal* article, Carney, one of the plaintiffs here, is quoted as saying, in speaking of the drive, "We will go to Jersey City to organize in a peaceful manner. Whether this will be possible in the face of denials of civil rights in that city I am unable to say at this time."

Did they not come to Jersey City in a peaceful manner?

A. Now, just a minute, Counselor. That statement that Carney makes is after his wild, furious statement that he made prior to that. He was advised to correct his statement, apparently, and this is the result of a mild, careful, planned statement.

Q. Do you know that?

A. Oh,——

Q. Do you know that to be a fact, that he was advised——

A. Oh, there was such a great difference in both statements. One was the statement reported by the *Bergen Record,* that was copied by numerous papers throughout the country, and then afterwards, after a lull—if you note, I have never said a word from the issuance of that statement up until the time these men entered Jersey City; I was never quoted on any statement whatsoever, because I was waiting to see just what the results was and what really was behind the original statement.

Q. Now, you made preparations, however, on the theory that 2000 men would come in?

A. 3000.

Q. 3000, was it?

A. (The witness nodded.)

Q. That's what the original statement had?

A. Yes.

Q. Not two thousand in the *Jersey Journal*?

A. Yes.

Q. And you made police arrangements commensurate with the anticipated coming of three thousand men?

A. Well, you would if you read the original statement.

Q. Well,——

A. You would naturally prepare for any disorder. If these men—if Carney was quoted correctly, which I assumed he was, by the *Bergen Record*, that he was coming in, law or no order, he was going to take it over.

Q. Now, that preparation therefore, as you believed the *Bergen Record*, was made commensurate to that number of invaders, so-called?

A. Yes; and all our daily papers throughout the Metropolitan Area published that and quoted it. As a result there was probably a hundred and fifty camera men down there and probably fifty, sixty or seventy reporters, all waiting for these men to arrive.

Q. Well, Mayor, I wonder whether I can refresh your memory, perhaps, as to the number of persons who were there, by reference to a statement which is attributed to you by the *New York Times* on January 12th of this year; before this attempted invasion of theirs, they had never asked for a permit to hold a meeting in any public place.

"The first I knew about it was when I read their announcement in the *Press* that they were going to invade Jersey City with an army of three thousand men, and were going to hold a parade, stage a public meeting, and distribute handbills, all in violation of law. There was the same defiance of constituted authorities, the same flaunting of law, that had accompanied CIO strikes in the west. There was no strike here, no demand from the workers by Jersey City for

them to come in here. If even twenty or thirty percent of the people of Jersey City were in sympathy with them, and welcomed their arrival, there might be some justification for their attitude, but there is no such picture here."

So that was the basis of your defense measures, was it?

A. (The witness nodded.)

Q. "Only about forty of them came"—you are quoted as saying—"all outsiders, CIO and Civil Liberties officials, organizers, and lawyers from New York and Newark."

Now, does that refresh your memory as to the numbers that came over?

MR. MATTHEWS: I object, if your Honor please. The Mayor had said there were camera men in that number.

A. Oh, I was talking about the wide publicity it received, that it attracted the attention of the Metropolitan press and all the various neighboring cities.

Q. As I recall it——

A. They had their staff writers and everybody present to see the circus, as they pictured it.

Q. As I recall, on your earlier testimony you said that there were a hundred or two hundred?

A. That is all.

Q. Not over two hundred?

A. No, there wasn't.

Q. But I just wanted to call to your attention that at the time——

A. There wasn't——

Q. You said there were only about 40 of them, all outsiders, CIO and Civil Liberties officials, organizers and lawyers from New York and Newark. "The police met them and escorted them to the city line."

Do you think that was such a demonstration, so modest in size, that the police had a right to do that?

A. Well, Counselor, of course, if you are advised beforehand that there is to be an invasion by a group of men that's coming for the purpose of defying law and order, naturally you are going to be prepared. That was our information. We had to assume that the quotations in these papers was correct.

Q. Yes, but I mean when you saw that this travail of the mountain had borne the mouse of forty men, did you think your forces——

A. We didn't anticipate that. We had to assume that Carney's statement was correct.

Q. But not when you actually were there, confronted with the situation?

A. No.

Q. Were the same methods of force required to handle forty men that would have been required to handle two thousand?

A. Oh, there were more than forty. There was close to two hundred.

Q. Well, the newspaper men and the photographers were not disorderly, were they?

A. Oh, no, no, no. We are talking about the men that went into this headquarters.

Q. Well, now, the testimony in this case from people who were actually in the headquarters would indicate that there might have been from forty to fifty people there altogether.

A. I don't agree——

Q. Including observers and so on.

A. Not from the police report. The police report gives it far over two hundred men and women.

Q. Now, in this same interview, when asked whether it wasn't a violation of civil rights arbitrarily to throw them out, you were quoted as saying, "no, they went peacefully, didn't they? The police didn't want to arrest a lot of people, but keep these outsiders, who had no business here, out of the city."

You said that substantially, on your examination earlier, didn't you?

A. Yes. Well the police had no desire to arrest them. They have no desire to arrest anybody, for——

Q. The police handled them gently——

MR. HERSHENSTEIN: Let him finish.

MR. FRAZER: I thought he had finished.

Q. Did I interrupt you, Mayor? I didn't mean to.

A. What I wanted to say was, the police have no desire—that is, the heads of the police department—to arrest anyone for a mere violation of a city ordinance of that character. Their purpose is to try to remove them from danger and from scenes there so that they would go peacefully away. They have no desire, and you might note that on the distribution of circulars they had no desire to arrest; but in this particular case, Counselor, the thing got so serious and got—developed into such great proportions, that the police decided, with Commissioner Casey and myself, that the proper thing to do was to serve notice upon these people that they were in violation of the law. They were advised by Carney and their friends that there was no violation of the law, because that has been their contention, that they have a right for a free distribution of circulars, that they have a right to free assemblage, that they have a right to free speech. Now, that has been impressed upon every one of these folks. So they came over with that thought.

Q. Well, isn't that a proper thought?

A. Well, now, wait. I thought the proper thing to do was to enlighten them as mildly as we could, to let them know that there was law and order in Jersey City, that they were in violation of the city ordinance, that this unlawful assemblage was a violation of the state's statute. We had to proceed with as small a number as possible. If you will note, there was only five or six of those men that was distributing circulars all around these factories that was brought to headquarters and charged with the unlawful

violation of that ordinance, and the heads, ringleaders, was arrested for unlawful assemblage. Now, that was only done purposely to let everybody know that there was law and order, and that they were in violation of the law.

Q. Now, what was——

A. That's why the others was escorted away.

Q. What was unlawful in that assemblage?

A. Well, when the police head repeated to the men who was the head of this group that assembled there, as I said two hundred or more, they notified them that they were unlawfully assembled, that there was an ordinance there prohibiting this distribution of circulars and that that was in violation of the law.

Q. Now, was there any authority or any place for them to go to and get permits to distribute? There wasn't anything in the ordinance.

A. Oh, no, there was nobody could get any permits.

Q. Suppose they honestly believed that the police construction of this ordinance was improper and that they did have the right, which they were asserting, was there any way in which they could bring that matter to a test except to attempt the circular distribution?

A. Well, now, there was——

Q. Will you answer me that? Was there any way that they could do it?

A. I wanted to say to you, Counselor——

Q. I want an answer to that question.

A. Yes or no? I am going to answer it.

Q. Is there any other way that they could test this ordinance except by coming to the city and distributing them?

A. I am going to show you that the ordinance was tested by a group in Jersey City and brought to our Supreme Court and decided by Justice Case, in I think it was Branch 2. Now, there was a group of men who took it upon themselves that they were being deprived of their rights of the distribution of advertising circulars, so they engaged a

lawyer and the lawyer took the matter up before the Supreme Court of New Jersey, the Second Branch, and they decided, in the opinion written by Justice Case, sustaining the local ordinance. Now, why didn't they test it in that way instead of—why didn't they get their counsel to go into litigation and test that instead of coming over there with "law or no law," that they were going to assume their constitutional rights? Why don't they let the courts decide?

THE COURT: I have never seen those proceedings, Mr. Hamill; I have never been able to find out how they did test it.

MR. FRAZER: I beg your pardon, your Honor.

THE COURT: I say I have never been able to find out how that test was carried out.

MR. HAMILL: Which one do you mean?

THE COURT: The one the Mayor is speaking about, the alleged advertising circular case.

MR. HAMILL: Well, they didn't have to come in, any taxpayer or citizen who had a special interest in that could come in and test the validity of that ordinance without coming in in numbers to test it. That is what he is saying.

THE COURT: I asked to have that opinion the other day so that I could see how it was done in that case. What is the citation?

MR. HAMILL: There was no necessity for this violation.

THE COURT: I understand.

MR. HAMILL: It could have been——

THE COURT: Have you got the opinion?

(Opinion handed to the Court.)

THE COURT: Well, it was tes' .d in exactly the same way, Mr. Hamill; they were arrested and convicted exactly the same way that took place here. I thought that was what had happened.

MR. HAMILL: You will find out more likely that that was a test case where they came in and that there was a conviction in the very same manner as the ordinance regulating the traffic on the Skyway was tested.

THE COURT: This isn't Justice Case's opinion. Where is the Justice Case opinion?

MR. STOFFER: That is 12 Miscellaneous.

THE COURT: May I be furnished with that?

MR. STOFFER: Yes, your Honor.

MR. FRAZER: That was the one, your Honor please, which relates not to the distribution of circulars to individuals, but throwing them in the areaways and putting them in letter boxes.

THE COURT: I assumed it was, but I just wondered how the test was made.

MR. FRAZER: It was made, I understand, in exactly the same way. There was an arrest made.

THE COURT: That is what I would suppose. I would like to see it.

Q. But there was another case, Mayor, of Coughlin v. Sullivan, wasn't there?

MR. HAMILL: You will find that that was the case where they were distributing in a store.

MR. FRAZER: No, I think not, in the Coughlin v. Sullivan case.

MR. MATTHEWS: The library has all of that, why not let us go on?

MR. FRAZER: Why not allow me to conduct my examination, Mr. Matthews?

MR. MATTHEWS: I allow.

Q. There was a case of Coughlin v. Sullivan in which there was an opinion given by Justice Minturn, you may recall, where there was a distribution of circulars criticizing the city government, and it was held in that case, as I recall it, that it was unlawful to interfere with that distribution; do you remember that?

MR. MATTHEWS: I object, if your Honor please, that is calling for a conclusion, and we don't know whether those are the facts or not. Counsel is trusting——

THE COURT: Will you get that? What is it?

MR. KAPLAN: I think it is 100 Atlantic. I will find it in a moment.

Q. Now, in this case they did take the matter up to court, didn't they?

A. What case?

Q. The case, the recent November 29th incident.

A. CIO?

Q. Yes.

A. Yes.

Q. They went to court?

A. The police courts?

Q. No, I mean to the higher court.

A. Yes.

Q. Now pending there on certiorari, isn't it?

A. Oh, no, that wasn't certiorari, before Justice Bodine. Didn't he render his decision on that case against us? We withdrew all our legal objections the moment Justice Hughes had rendered that decision.

Q. Well, the case did go up to the Supreme Court?

A. Yes.

THE COURT: There it is.

Q. Now, as a matter of fact, there was considerable violence that day on the part of the police, wasn't there, Mayor?

A. No.

Q. It has been so testified to.

A. No.

MR. MATTHEWS: You are shaking your head; that stenographer cannot see it.

A. I never heard of it.

Q. You say in your statement, "Nobody has complained of being beaten or even spoken to harshly." There were several witnesses; one of them used the picturesque expression "being hit in the short ribs."

A. Where?

Q. On November 29th.

A. On this morning in question?

Q. Yes, sir.

A. I never heard of it.

Q. And there were a number of others who testified to having been struck. Would you call that being gently used?

MR. MATTHEWS: I object. I don't see why he should be called upon to characterize testimony by other people. He does not know whether that is so or not.

MR. FRAZER: I am asking him to characterize his own statements whether they were accurate.

MR. MATTHEWS: He didn't make the statement that people were hit in the short ribs.

Q. No, but I am asking him whether in view of the fact of that testimony he would say that the statement which he made earlier was accurate that nobody was roughly treated; his exact words are "Nobody has complained of being beaten or even of being spoken to harshly."

MR. MATTHEWS: I object because there is testimony to that effect doesn't make it true or it doesn't make the Mayor's testimony untrue. The Mayor's opinion is

that there was nobody injured or hurt. Now, some fellow comes on here on this stand and says he was hit in the short ribs and Mr. Frazer wants to know "Does that change your statement any?" Why should he take the statement of that witness to change his statement?

Q. If those were the facts you would not say that that was gentle treatment would you?

A. Well, they are not the facts, counsel.

Q. The facts are in evidence and the Court will decide if they are true.

A. I don't believe this witness who was here.

Q. But assuming he told the truth——

MR. MATTHEWS: I object. You cannot assume that the witness told the truth; that is for the Court to decide.

THE COURT: Obviously it isn't then if that is true.

MR. FRAZER: Obviously the Court has decided.

MR. MATTHEWS: The Court has not decided.

MR. FRAZER: Oh, yes, the Court decided whether that was gentle treatment or not.

MR. MATTHEWS: I think he is more judicial than that.

THE COURT: I say if it was true that someone was hit in the short ribs that would not be gentle treatment, we all agree to that.

MR. MATTHEWS: That isn't the question before the Court. Well, I am glad to have the record as is.

Q. Now, Mr. Mayor, you have made statements that whether permits were to be granted depended upon the purposes for which the meetings were to be held.

A. Political meeting or public meeting?

Q. Public meetings. And referring again to my letter of December 23rd, P-13, I distinctly stated that the purpose

of the meeting for which I was applying for a permit "is to petition the Board of Commissioners of Jersey City to modify Jersey City's leaflet distribution ordinance and its ordinance on public meetings and to take appropriate action against intimidation by certain officals of your City, of owners of halls who, but for the fear of incurring official hostility, would be willing to rent their premises for meetings of the Hudson County Organizing Committee." Do you not consider that an appropriate purpose for a public meeting, to petition——

MR. MATTHEWS: Now, your Honor, I object to that, to petition the Jersey City Commissioners. The proper place to present a petition of that kind would be to go to a Commission meeting and petition it. So if Dean Frazer asks——

THE COURT: Dean Frazer asked if it was a proper purpose.

MR. MATTHEWS: Well, he read from the letter, which of course was a letter to make a record rather than a letter to the Commission.

MR. FRAZER: Why, certainly.

MR. MATTHEWS: He says the purpose of the meeting is to petition Jersey City to modify this ordinance. The proper place, as you know, would be at a Commission meeting.

THE COURT: You may answer.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Would you consider that a proper purpose?

A. You ask me, Counselor, that this application that you had directed to Commissioner Casey——

Q. Yes.

A. —or did you direct it to the City Commission, Casey and the others?

Q. I directed it to Commissioner Casey because the ordinance says that application shall be made to the Director of Public Safety.

A. Yes, yes.

Q. That was the proper place?

A. That is perfectly all right. The only thing I want to get plain, if you will remain here and help me with this, --that was a lengthy statement that you read to me. Will you read it again?

Q. I just want to let you look at it.

A. That is your letter. I want to answer your question just as you would like to have it answered, if I possibly can.

Now, do you say that this letter,—do I think this is justification for getting a permit, this letter?

Q. No, I am asking whether the purpose which is set forth in the letter——

A. There was justification for granting the permit?

Q. Was a proper purpose for an open meeting, a public meeting?

A. Yes, it was a proper purpose, but just now, Counselor, wait, that is a lengthy statement—I stated here prior on my last visit here that there was no applications ever denied for public meetings in Jersey City until this uprising and this disorder and this disturbance took place. After that we realized then that we had to be careful about the granting of permits, and it was then that we discontinued granting permits because of this trouble that was between the City of Jersey City and the CIO.

Q. Now, what uprising can you refer to except the coming of forty CIO distributors or two hundred, if you wish, on November 29th to distribute circulars, what uprising was there?

A. If you read the public press, at the time that Mr. Carney had directed this group to come to Jersey City, as I stated earlier, not today, on my previous visit here, that as far as the CIO was concerned, that discontinued in a day or two, that was subsided, but then come Roger Baldwin, Garfield Hays, Mr. Ernst and all the Civil Liberties and all

the radical groups started to direct all their attention into Jersey City.

Q. Well, now, was there any uprising?

A. Counselor, that was it, we had a wide publicity campaign on that, that is, not Jersey City but the papers took it upon themselves because of the attitude, of the threats of court proceedings and all sorts of litigations that was threatened against the officials, myself and the officials, and naturally the feeling that had developed amongst the people of Jersey City was not a healthy feeling, and the result was that the officials, and we still think that it is very bad judgment even now to hold meetings with the temperament of the people as they are today.

Q. So that you have now adopted a policy in Jersey City of suppressing all public meetings?

A. No, no, no, no. Don't have me answer that that way.

Q. Well, I would like to have your view on that.

A. We have not adopted a policy,—we have adopted a policy to safeguard the lives and properties of our people because of the disorder that is apt to take place and the violence that is apt to take place. Naturally we must safeguard our people.

Q. I want to ask you once more whether except for the episode on November 29, 1937, there was any disorder indicated up to the time that I wrote my letter——

MR. MATTHEWS: I object.

Q. —and if so, what that disorder was.

MR. MATTHEWS: I object. The Mayor has testified that he was not waiting for riot to occur, that his people in Jersey City were offended at what was happening, were afraid that something would happen, and that therefore he adopted a policy of carefulness, and Mr. Frazer is reading one sentence out of a letter and he doesn't give him the whole letter, which would indicate that the purpose of the meeting was not to have the ordinance modified or anything of that sort, the purpose

of the meeting was to bring in speakers into Jersey City who were the very subversive elements that the Mayor has said were causing trouble in Jersey City. The next paragraph in the letter, Charlie prompts me, —perhaps over your shoulder——

MR. FRAZER: Oh, I am quite used to that.

MR. MATTHEWS: —indicates that that is so.

THE COURT: Do you want another paragraph read?

MR. MATTHEWS: No, I don't want anything except to object to counsel's statement that Mayor Hague had nothing but the episode of November 29th to warrant him in refusing the permit.

MR. FRAZER: I will ask Mrs. Bergen to read my question.

(Question repeated by the reporter.)

MR. MATTHEWS: I objected because the Mayor had previously testified, while your Honor was in a bit of inattention, that he had assumed by reason of what had happened before the statements of Carney, Roger Baldwin, and so forth, that his people were in danger.

THE COURT: I heard that; I heard that, Mr. Matthews.

MR. MATTHEWS: I beg your pardon, sir.

THE COURT: You may answer.

MR. MATTHEWS: I thought I was prompting you.

Q. Will you answer that, Mayor, whether there were any uprisings?

A. Prior to Mr. Carney's entering Jersey City or later?

Q. No, after what you have called the uprising on November 29th; were there any uprisings in Jersey City, up to the time I sent my letter on December 23d?

A. What time elapsed, Counselor? Will you enlighten me? What time elapsed from the invasion of Carney's

group and his public statement and your letter? Would you give me that——.

Q. Roughly four weeks; from the 29th of November to the 23d of December.

A. There was a vast—you see, there was a great deal of time that had elapsed. You see, your letter arrived, I would say, Counselor, in the center of all this disturbance.

Q. Well, what was the disturbance after the November 29th episode? There was an orderly application to the Court for the review of the work of your city judge. Was there anything else that was done by the CIO?

A. Yes, yes, yes. The CIO proceeded immediately to start to make a request of Commissioner Casey for public meetings and advertised Roger Baldwin, Garfield Hays, and all these undesirables, to come in there and make these public addresses. So that controversy was going on between the officials and the leaders of the CIO and the leaders of the Civil Liberties. There was quite a lot of disorder, quite a lot of statements, quite a lot of threats of litigations and invasion—in free speech and free press.

Q. Well, what ones? I would like to have my attention directed to some one of them.

A. Some one what?

Q. Of these quite a lot of things that you said had elapsed. You haven't specifically stated one.

A. Well, every day.

Q. What?

A. Every day there was nothing but flare heads in the public press of what Baldwin was going to do to the officials of Jersey City, and, why, even Morris Ernest was on the air at least three or four times during that period, making nation-wide hook-ups, and attacking the officials of Jersey City, threatening them with all types of court proceedings, prior to your application being received.

Q. Now this attitude of unrest, you said, still persists in Jersey City?

A. Oh, very strongly, very strongly.

Q. And on account of that the Commission has determined that there shall be no public meetings granted to any one, no permits?

A. I wouldn't say anyone. I would say those who are associated with these elements that's responsible for all this disorder.

Q. So that the permits will be denied only to persons who are associated with the plaintiffs in this case?

A. Can your clients or can your associates show me one application from the CIO, Counselor, where they requested a public meeting that was denied, or where there was an application prior to this uprising?

Q. The uprising is the episode of the 29th of November, isn't it?

A. Yes; but show me one application prior to that. Can you show me where anyone interfered with the CIO in any meeting or any business that they wished to transact? They had three headquarters. Nobody bothered them. They had public meetings in big halls there. Nobody molested them, nobody interfered with them. There was nothing prior to this trouble with Carney's statement. There was never an application denied by the City officials. This all occurred after this uprising that took place, as you say, the 29th. I am not exactly familiar with the date.

Q. The headquarters which they had in Jersey City were under constant surveillance, were they not?

A. No, sir.

Q. They were not?

A. That's untrue. I read that in the paper. That's untrue.

Q. Now the men for whom I asked permits, Mayor, were Congressman Jerry O'Connell.

A. What?

Q. The men for whom I asked pemits, Mr. Matthews objected because I had not given you the names although I had showed you the letter—Congressman Jerry O'Connell and Roger Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler—they were all objectionable?

A. Well, O'Connell was objectionable, Arthur Baldwin was objectionable.

Q. Roger Baldwin, you mean.

A. Roger Baldwin. I am thinking of Arthur Baldwin, the noted lawyer over in New York. Roger Baldwin was objectionable. Now I don't recognize the other names there.

Q. William J. Carney.

A. Well, at that time he probably would be objectionable because he started all the trouble.

Q. He wasn't present at that episode on the 29th of November, was he?

A. No, he didn't—he didn't appear.

Q. What about Al Barkin, was he——

A. I don't know the gentleman.

Q. Sam Macri, he was an organizer.

A. Is that the man that was on the witness stand?

Q. That was the one that was beaten up.

A. McCrae? Is that the way you pronounce it? What is the proper pronunciation?

Q. Macri; I think he is an Italian.

A. Oh, I only know him by reputation. He is located in Jersey City.

Q. Yes.

A. I don't know him. I only know him by reputation.

Q. Would there have been any objection to his making a speech?

A. At that time, possibly, because of his activities in these flare-ups that we had there.

Q. In short, practically all of these were, on account of their association with the CIO, or would have been objectionable?

A. No, no, there was nobody objectionable, Counselor, prior to this trouble. We never—as a matter of fact, we went along in a peaceful, orderly manner, ever since I have been in control of the government. We have never had any trouble; and we have never denied a permit in Jersey City.

Now we have had a very disturbing element in Jersey City for years, and that man and his group has never been denied one permit in Jersey City by the city officials.

Q. Well now, Mayor, you did know that prior to November 29th, 1937 and as a sequel to the organization efforts which were started on that day by the distribution, the CIO had hired for a meeting the People's Center for December third?

A. People's Palace?

Q. People's Center, I think, isn't it. Do you know the hall called the People's Center?

A. Yes, I know it.

Q. You knew that that had been hired?

A. No.

Q. Well, if I assure you that it had been, and it was so testified——

A. If you had it had, that is perfectly all right.

Q. And the meeting in the hall, the deposit, the rental of the hall, was cancelled, and it was impossible to obtain a hall on that date. Do you know anything about that?

A. You see, that hall is conducted by some religious order, Counselor, and they are very strict, and I could assume that if they read in the public paper that there was somewhat or any disturbance that would surround this meeting, they would readily cancel it, because it is a very high class hall and it is a religious hall.

Q. The People's Palace?

A. Yes. I think if the records, if you examine the records, I think the CIO had several meetings in that Center some years back.

Q. They had had up to this time.

A. Yes. They had held meetings there.

Q. It was so testified to, right up to this time?

A. Yes.

Q. Right up to this time they had had meetings in that hall?

A. Yes.

Q. And on December third they had arranged for a large ball or something of that kind there, and had made all their arrangements, and then the hall was withdrawn from them.

A. No, the only—I was walking along Bergen Avenue with Mr. Malone, my deputy, and the superintendent of the People's Palace walked across the street and stopped me and said to me that Jeff Burkitt was there that afternoon, representing the CIO, and that he was very, very abusive, that he insisted that that hall be rented to him, and this man says, no, that he was sorry, that he couldn't allow Burkitt or any disturbance to take place in his hall. Now that's the only time I ever heard anything about that.

Q. Now, Mayor, as you said, prior to December 3d they had quite regularly been meeting in this particular hall?

A. Only as my recollection recalls. I don't know the dates. I remember there was nobody ever stopped.

Q. No; and there was no disorder in any of those meetings, was there?

A. No.

Q. What?

A. No; they are used to that.

Q. Why did you suppose there was going to be such disorder on December 3d that it would be necessary that they should not have the hall?

A. Only the class of speakers that they had advertised to address them. That was Roger Baldwin and these other groups of radical speakers.

Q. At this meeting of December third?

A. I don't know. I am only say——

Q. Aren't you referring now to my letter?

A. No, no; I am only referring to this: to the uprising, to the beginning of this disorder, that took place in Jersey City. Prior to that there was never an objection. Since that disorder, then the objections was filed, and we thought that after the veterans and after all the civic bodies and everybody had filed their objections, that it was due time for us to suppress these meetings for the present.

Q. And so they were suppressed?

A. (The witness nodded.)

Q. And still are?

A. Yes, sir.

Q. And when we were discussing this statement of Brophy about the rubber hose, you said it was taken as a joke.

A. Well, from the papers, the newspapers' accounts, as I say, Counselor, when you are in a meeting that's called to order for a purpose of that character, naturally you are going to have men who express themselves that ordinarily would never make those assertions.

Q. And——

A. We allow for that.

Q. Yes, I understand that. And the administration did indicate its displeasure of any such thing?

A. Commissioner Casey immediately was interviewed by one of the men who is present here, and he denied it, said that he was sorry that the assertion, the statement, was ever made, and that there was no truth in it; that he would see that it was not carried out.

Q. Now, if you remember in my examination the other day of you, I asked you this question:

> "I say do you think you could have prevailed upon the veterans to have been a little less aggressive if you had asked them to do so?"

And your answer was:

> "Well, I wasn't desirous of asking them that."

A. Yes, sir.

Q. Now, why were you not desirous of asking them to be less aggressive?

A. Because I felt that for the safeguarding of the people's lives in the city that I represented, that I was not desirous of asking them to withhold any objections or any protests, because I felt that it was justified, and that the conditions that surrounded their action was really in keep-

ing with their National Convention in the City of New York, where they came out and publicly declared, openly, about radicalism and Communism.

Q. Don't you think they might have come down, as Mr. Matthews suggested, the CIO, to your commission meeting and asked you not to permit these people to come in, rather than to come in hordes?

A. Well, if you recall, Counselor, your letter or the applications would be received, like today, desiring three days from now. Our meetings is only every two weeks, so it would be impossible for them to appear there.

Q. I see.

A. In some instances.

Q. That would probably be also true of my letter, if I were applying——

A. Oh yes, oh yes; if you——

Q. In a week or so?

A. If you wanted official action before the commission, yes.

Q. There was no permit for those meetings of the veteran demonstration, was there?

A. No, there is no permit for any indoor meeting.

Q. No, I mean afterwards; they had a demonstration, didn't they, a march or something of that kind?

A. Oh, they appeared as citizens; they appeared as private citizens on that assemblage that they had at the Square. They only appeared with forty or fifty thousand others.

Q. That was not an assemblage; that was just private citizens?

A. Well, I don't know what you would call it.

Q. But there was no permit for that assemblage, was there?

A. No, there was no necessity for a permit there.

Q. But there were some seven men, something like that, out of a group of forty who were distributing circulars, on November 29th, who were arrested for unlawful assembly; that's true, isn't it?

MR. MATTHEWS: I object, if your Honor please. That is not the testimony. Seven of the forty that were arrested were not arrested for distributing circulars but for creating disorder.

A. No, that is untrue.

THE COURT: They were arrested for both, as a matter of fact.

MR. MATTHEWS: What?

THE COURT: They were arrested for both matters, as I understood it.

MR. MATTHEWS: For disorder.

MR. FRAZER: No.

THE COURT: For disorderly assemblage, that is what the testimony was.

MR. FRAZER: Unlawful assemblage was the charge.

MR. MATTHEWS: I don't care what the charge was, we are talking about what the testimony is, what the Mayor has already said.

MR. FRAZER: I am not speaking of the Mayor's testimony.

THE COURT: Someone else's testimony.

MR. MATTHEWS: Then let him be confronted with the testimony of another and ask him if that is true—or not if it is true; if he agrees with that. He can't characterize it as true or false.

Q. Now you remember saying on Friday that your fight at the present time was not with the CIO; "That's why I charged the CIO that if these men represent it they surely must be a radical group," having referred to Mr. Ernst and a few of the others—"they surely must have Red leanings, they must be leaning in the Red direction."

What is a Red?

A. A Red?

Q. What is a Red?

A. You mean my interpretation of a Red?

Q. Yes.

A. A Red is a Communist. I interpret—I gave you my interpretation of a Communist.

Q. They are the same thing?

A. The same thing.

Q. Synonymous?

A. Yes.

Q. Now, all of these organizations you say, the Civil Liberties and things which are sponsored, the Workers Defense League and those, are all Red or Communist?

A. They are all Red and Communist, both.

Q. Now, did the American Civil Liberties Union ever hold any meetings in Jersey City before this?

A. I do not know, Counselor, but if they made application, that is—I feel they never held an open-air meeting.

Q. Did they ever hold any other kinds of meetings?

A. I think so, in public halls I think you will find, I am not sure; but they never had any request before the commission which was acted on officially; we never had that.

Q. Did Mr. Roger Baldwin ever speak in Jersey City?

A. I think he did.

Q. And did Mr. Norman Thomas ever speak in Jersey City?

A. Yes, sir.

Q. Were any of those appearances attended by any disorder or disturbance?

A. I don't think so. That's indoors, now, Counselor.

Q. Yes.

A. That was not open, public—open meetings, on the streets; that's indoors. It is an easy matter to regulate an indoor meeting.

Q. Did you ever give any permits to the Communist Party as such for outdoor meetings?

A. No.

Q. Are you sure of that, Mayor?

A. I am not sure.

Q. I just asked you——

A. When I say that, I don't know. As I said to you, Counselor, I look the records over and I have been familiar with the records for the last twenty years, because all these matters were there is any disputes take place, they are brought before the attention of the official body. I don't remember denying anyone a permit.

Q. Well now, I just want to call your attention to something. I show you Exhibit P-10, which was produced by Commissioner Casey. I don't want to mislead you.

A. No, that's all right.

Q. And I show you, starting in here, a list, July 22d, 1932; Socialist Party, Communist Party, Socialist Party, Communist Party, Socialist Party, Socialist Party, Communist Party, Communist Party—there is no use of reading a large number of them.

A. No, no.

Q. Just to show that permits had been granted to the party which Mr. Thomas represents and even to the Communists.

A. That's exactly, just exactly what I have stated, Counselor, that there have been three permits denied prior to this uprising. Now the records show there, which I have not examined, that the Communist Party and the Socialist Party was granted permits, every request that they ever made to Jersey City. Now, as I still say and repeat, everything was harmonious in Jersey City. There was no disorder, no trouble, no misunderstandings, until this statement of Carney that he was to invade Jersey City and just rip us apart; and I think we were justified in being disturbed and being unduly alarmed—alarmed sufficiently to safeguard the people.

Q. Now, the only act of disturbance for which the CIO was in any way responsible or for which the Civil Liberties

Union was in any way responsible—oh, I won't say that.

Was the Civil Liberties Union responsible for any disorder in Jersey City since November 29, 1937?

A. In what respect, Counselor, are you referring to?

Q. Have they attempted any public meetings against your denial of a permit?

A. No, no, they have not.

Q. Has the CIO?

A. Other than their application——

Q. They both made applications, did they not?

A. Well, I anticipate that Jerry O'Connell and Bernard was representing the CIO when they defied everybody.

Q. Well, you assumed that.

A. Well, they stated that, Counselor. That's their public statement.

Q. But you know of no application either by the Civil Liberties Union, subsequent to these of December, or by the CIO, for a public meeting, do you?

A. Since our trouble?

Q. Yes, since November 29th?

A. No, no.

Q. And since the applications we made in December?

A. Yes, yes, the CIO made an application and it was denied, you will recall.

Q. Yes.

A. And they advertised Baldwin and numerous others.

Q. Yes, and that application was denied?

A. Yes.

Q. And there was no attempt made to hold that meeting, was there?

A. Oh, no, no. Then there was the application for Jerry O'Connell and Bernard, and that was denied.

Q. And there was no attempt made to hold that meeting?

A. Oh, yes, there was quite an attempt made.

Q. Wasn't it a subsequent meeting when Mr. Bernard and Mr. O'Connell said they were coming in?

A. No.

Q. They didn't come?

A. Their application was received and they were scheduled to talk, and it was denied, and they said permit or no permit they are coming in here.

Now, Jerry O'Connell in Washington, if the papers is quoted properly, stated that he wasn't even going to give us the honor of making an application for a permit. He was going to come in and talk whether we liked it or whether we did not like it.

Q. Now that was the first so-called O'Connell meeting?

A. No, that was the second, that was the second.

Q. The first, the permit had been denied?

A. Yes.

Q. And no speech or no attempt to make a speech had been made?

A. Well, he didn't appear.

Q. Mr. Norman Thomas had been in Jersey City on many occasions?

A. Oh,——

Q. Without disorder of any kind, is that true?

A. Never had any trouble.

Q. And in all of these years prior to November 29, 1937, there had been no violence or disturbance in public meetings of either the Communist or the Socialist Party, that's right, isn't it?

A. No, no, let me answer that Counsel. As the record shows, that Commissioner Casey produced here, that I just examined, that clearly expresses to the country Mayor Hague's attitude on free speech.

Mayor Hague has never denied free speech, as the record shows, Communists, Socialists, every application that was ever made to the City of Jersey City was granted. That record shows that, Counselor, Now, I wasn't familiar with that record. I had always maintained that we had never opposed free speech and I would like to say to the country that the evidence that you just produced clearly

demonstrated that Mayor Hague never opposed free speech. The only time that free speech was ever questioned has been since this trouble and this disorder.

Q. Well, now, there is perhaps one other instance there.

A. And I think it is time, Counselor, that public officials should inject themselves in when there is disorder and bloodshed in danger. Then I think it is time free speech ought to be considered in its proper manner to safeguard the city I represent and its people.

Q. There was a suit brought against the City of Jersey City at the instance of the Hudson County Committee of the Communist Party and one Jay Anyon.

A. Is that before Vice-Chancellor Fielder?

Q. That was before Vice-Chancellor Fielder.

MR. MATTHEWS: When was it, Spaulding, please?

MR. FRAZER: Well, the opinion was rendered on January 19, 1937.

THE COURT: There is the opinion.

MR. MATTHEWS: I am familiar with the opinion; I just forgot the date.

Q. Now, at that time, in November, 1936, there was some distributing of ordinances, was there not?

MR. MATTHEWS: Ordinances, did you say?

Q. Of circulars, excuse me. A pamphlet entitled "Ford strike solidarity meeting was attempted." Do you remember that?

A. No, I do not.

Q. Now, on November the 17th some men came and asked for a permit to hold a meeting on November 21st at the Central Hall in Jersey City.

MR. HERSHENSTEIN: What year?

MR. FRAZER: 1936.

Q. Do you remember that?

A. No, I do not.

Q. Well, you remember generally the facts in this case?

A. I remember the Fielder case.

Q. That is what I am referring to. These are copies of the affidavits filed by the city in that cause. Do you remember that there was an application made for a permit to hold the meeting in that particular instance to the police, to Chief Walsh in fact?

A. Was that an open air meeting?

Q. No, that was a meeting in a hall.

A. I think the circumstances surrounding that particular case, Counselor, is this, as near as I can remember, that the Communist Party, the men representing the Communists, appeared at this hall and engaged the hall and put a deposit of $5 on it. At that time they did not inform who they represented; they said they represented some people that wanted to hold a meeting or some little affair or entertainment of some sort, and my information, if it is correct, is that this proprietor was somewhat disturbed after they left and made some inquiries as to who this group was, and I believe he ascertained, how I don't know, but I think he wrote them and returned their $5 and said, "I cannot rent this hall to the Communists" or whatever it was, and they took the matter up.

Q. Unless you have a permit, wasn't that what he said?

A. No—well, if he stated that that was untrue.

Q. Well, now, at that time you did have an ordinance on the books of Jersey City which said in effect that no hallowner should rent his hall for any meeting at which the destruction of the Government and so on would be discussed unless be obtained a permit from the police; that's right, is it?

A. I don't know.

Q. Well, there was such an ordinance?

A. I think there was.

THE COURT: It is in the bill of complaint. I think we had it the other day.

A. I think there is one.

MR. FRAZER: Yes, it is in the bill of complaint, and Vice-Chancellor Fielder's opinion refers to it.

MR. HERSHENSTEIN: The 1920 ordinance.

Q. Yes. This is rather small print, Mr. Mayor, but here is the ordinance: "No person, firm or corporation, owning" —may I read it for you?

A. Yes.

Q. "—owning, maintaining, operating, leasing or renting any hall, auditorium, room or other place for the holding of public meetings shall rent, lease, hire or permit the use thereof without a permit therefor first obtained from the Chief of Police for any such meeting, whereat any such person shall speak upon the subject of obstructing the Government of the United States or any state thereof, or advocating the abolition, overthrow or change of the Government of the United States, or any such state, by any means, method or activity" and so on.

MR. MATTHEWS: Other than those now allowed by law. You should continue.

MR. FRAZER: I am perfectly willing. I thought I would give him the gist of it. Go ahead, Sir John.

MR. MATTHEWS: "—or whereat the use of force or violence against the Government of the United States or any such state shall be advocated." That is the end of it.

MR. FRAZER: I am glad to have it all. My eyes are a little weak in this fine print.

MR. MATTHEWS: I am glad to assist.

Q. The object of that ordinance, Mayor, was to prevent the meetings under supervision of those who advanced doctrines which you considered to be the doctrines of the Communist Party.

MR. MATTHEWS: I object; that calls for an interpretation of the ordinance. That isn't so.

MR. FRAZER: No, I want to know whether those meeting which were prohibited were essentially those which you testified to be your conception of Communism.

A. Note the date of the adoption, right after the war.
Q. I am not criticising it.
A. No, I am only saying.

MR. MATTHEWS: Here it is right there, the purpose.

MR. FRAZER: Very small print.

MR. MATTHEWS: Yes, but big enough for his eyes though, that one. The purposes are right there in it, Mr. Mayor.

Q. So it was proper when the hallowner ascertained that this was a Communist Party meeting to insist upon the obtaining of a permit, wasn't it?

A. Yes.

Q. And then the application was made for the permit and the permit denied by the police?

A. I don't know whether the permit—the application was made to the police; my recollection was that there was no discussion with the police on that.

Q. Well, I will show you a copy of Harry Walsh who is——

A. Chief.

Q. —Chief, isn't he? This is his affidavit.

A. Did he say the application was made?

Q. Yes, he says here——

A. All right.

Q. "Finally the spokesman of this group said, 'Do we get a permit?' and I said, 'I will not give you a permit.'" Now, Chief Walsh proceeds then to list reasons subsequently upon which he stated a permit might not be granted,

although apparently he did not say then, from his affidavit, at the time. The permit among other things was denied because the building was not safe for such a meeting; the building was the Central Hall at 574 Newark Avenue.

A. That was their defense, I presume.

Q. That was their defense. The building is still used for halls?

A. Yes.

Q. They have pretty good sized assemblages there, don't they, Mayor?

A. Yes, "any port in a storm," Counselor.

Q. Now, that was a case where there was a suppression, wasn't there?

A. Yes.

Q. I just wanted to call it to your attention.

A. Yes, that is one particular case.

Q. And the Vice-Chancellor in that case made this statement: "The real objection of the police authorities to meeting under the auspices of complainant association is that they do not regard the principles of the Communist Party with favor and they fear that if complainants are allowed to hold a meeting that party's political principles will be expounded and urged and that disorder and even riots may follow." That is a correct statement by the Vice-Chancellor of the police's position, isn't it?

A. Yes.

Q. And your objection to the activities of the plaintiffs are based upon the fact that certain important members of those bodies are, in your opinion, Communists?

A. Yes.

MR. MATTHEWS: Now, if your Honor please, that question is not a relevant question to this issue.

THE COURT: I thought it was. You said plaintiffs, didn't you?

MR. FRAZER: Yes.

THE COURT: You may answer.

MR. FRAZER: He has answered; he said yes.

THE COURT: We will adjourn now for ten minutes.

(A ten-minute recess was here taken.)

Q. Now, Vice-Chancellor Fielder, Mayor, going on with this case, said: "The Constitution of this State guarantees to every person the right to freely speak, write and publish his views on all subjects, being responsible for the abuse of that right."

A. That is his opinion.

Q. Yes. Well, you agree with that, don't you?

A. If that is the law, yes.

Q. "This means freedom to express publicly views with which we disagree as well as those which have our approval."

A. Well, of course, he is referring, I presume, to expression publicly of something that is lawful, something that is not advocating the overthrow of our government.

Q. Well, don't you understand that the Communist Party advocates that, or do you?

A. Yes, yes. That question wasn't before Vice-Chancellor Fielder, Counselor, the overthrow of our Government. The question before him was whether or not they had a right to meet. They had not met yet.

Q. The complainant was the Hudson County Committee of the Communist Party.

MR. MATTHEWS: Yes, but that is obiter dictum on the part of the Judge. That is not dispositive of the issue before Vice-Chancellor Fielder. That is one of those peregrinations into the law that we take when we write opinions.

MR. FRAZER: Well, we will just see, Mr. Matthews, whether that is so.

Q. "There is no evidence before me that plaintiffs have held any meeting in this county at which the law has

been violated or at which disorder or disturbance have occurred. The police have no right to assume that complainants will not, under any circumstances, hold a meeting without making unlawful attacks on the Government." In denying permits to persons who you believe are associated with the Communist Party, do you assume the right to judge in advance whether there will be unlawful attacks made on the Government?

MR. MATTHEWS: I object to that question, your Honor, please. He is just trying use Vice-Chancellor Fielder's opinion as a basis for testimony. Mayor Hague has testified that the reason he refused these permits was because of riot and bloodshed that was threatened. Now, then, in the issue there, the issue in Vice-Chancellor Fielder's case was that the permit was refused. He says they have no right to suppose, but in this instance here, as we will show, the Baldwin statements and the Fish Committee were before the Mayor.

(Question repeated by the reporter.)

THE COURT: Read the last part of the question.

(The last part of the question repeated by the reporter.)

THE COURT: You may have an exception.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.) (Sealed)

MR. MATTHEWS: Well, the reason for the objection is this, that he is seeking to use Vice-Chancellor Fielder's opinion.

THE COURT: No, I left out the Vice-Chancellor's opinion.

MR. MATTHEWS: But that is the basis of the question. He is saying he doesn't assume anything. He had these creatures before him, Baldwin, et al.

THE COURT: You may answer.

A. You see you are selecting a case out of probably ten thousand cases. How this case found its way into court I do not know but I think it is rather unfair to judge the City Commission or officials on this particular case.

Q. Well, the case came into court, Mayor, because there was a denial to a committee of the Communists of the right to hold a meeting.

A. Of course, you have got to remember that is an indoor meeting also, that is not an open air meeting, and that is prior, long before these disturbances. That is at a time that disturbance was going on in other states all over. The Communists was criticised then as being the instigator of all this violence and disturbance. I presume that was the reason for the objection.

Q. Well, now, this opinion was filed January 19, 1937. That was only some nine or ten months before——

MR. MATTHEWS: The case was tried before that, wasn't it, Mr. Frazer, in November?

MR. FRAZER: Yes, it was started a year before, November, 1936. That is a year before.

THE WITNESS: He rendered from the bench, he informed us from the bench, the lawyers for the city, six or seven months before the opinion was filed.

Q. The Vice-Chancellor says, "It is also the duty of the police to suppress by arrest, if necessary, persons who may express violent disagreement with what may be said at such meetings rather than punish those who are threatened with attack." Do you think that in the removal of Mr. Thomas from Journal Square in April your police were protecting him from expression of his views?

MR. MATTHEWS: He has already testified that way.

A. That is a vast difference, Counselor. In this case you are referring to now about an orderly meeting, as they

charge, within doors when there was no disorder, no uprising or no dangers of violence; when Mr. Thomas entered the city it was in very bad condition. That was as far as the feeling of the people was concerned.

Q. What caused that feeling?

A. Just what we are discussing here, Counsel, which you are trying to restrain us from, was the CIO and Civil Liberties and all the Reds coming in there creating this disorder.

Q. Do you think the Reds have no right to express their views in Jersey City?

A. I think the Reds have no right to express their views in Jersey City if their intention is the overthrowing of our Government and the destruction of our American Government—no, they have no right because they are not American citizens and they are undesirables and they should be driven out of this country, not alone the city.

Q. Or put in a concentration camp in Alaska?

A. And you believe as I do, too.

Q. Thank you, Mayor.

Q. Now in this period of unrest, as you say, had you, as the head of the city government, called upon the people of Jersey City to behave in a peaceful and orderly manner on the coming of Norman Thomas into your city as he had done on other occasions, do you not sincerely believe that there would have been peace there instead of riot?

A. Well, I, as you note, I have made no statements at all during that period, because I was—in the first place, I was misquoted so frequently that I thought it would be better for me to remain silent and perform my duties as I seen it. I didn't issue any statement. You say that if I did, it would disperse all this feeling of unrest?

Q. Don't you think it would, if your views had been known?

A. I do not think so, Counselor.

Q. If you had said at the end of December, when the veterans, so called, had had their meetings, "I disapprove

of this demonstration; let us have order and quiet in Jersey City," don't you think you would have had order and quiet?

MR. MATTHEWS: I object, your Honor. Why should he disapprove of what the veterans did?

THE COURT: You may answer.

A. No, I do not think so, Counselor. I do not think that if I issued a statement, from the manner in which the public press had been running these stories and enlightening the people on just what was taking place, I don't think so.

Q. Well now, you remember what you testified to on Friday, that a movement of this character, particularly of such great importance, that one who is the official head—his principal desire to have co-operation of the whole community. "The people in general on every occasion that I have ever called upon the people of our city, they have responded."

A. Well, those are patrictic——

Q. Well——

A. Anything that was concerning the city, but this is a question that the people feel that they are being imposed upon, that they have singled out Jersey City as a city out of all the other cities in the country to set up a campaign of disorder, a campaign of discontentment. The people's minds today, as I say, from the newspaper publications, are not in that mood.

Q. Don't you think it would be patriotic on the part of the city of Jersey City, the citizens of Jersey City, if, in response to your request that they be quiet, they were quiet?

A. I think they were very patriotic for 25 years under me when no permits was denied and nobody was deprived of their free speech.

Q. No one during that time had any disturbance?

A. No, never.

Q. Certainly not the Red element?

A. Well, we never treated the Red element with any serious consideration. They come in and they went out about their business, and the people of Jersey City wasn't interested, apparently, and the result was that there was no disputes, no trouble, none in the least.

Q. Now you said during this period you had made no statements because you have been misquoted.

A. That's during this controversy.

Q. Yes. But it is true, I think you already said, that you didn't have to make statements, that people knew your views.

A. They know I am for law and order, Counselor.

Q. Yes.

A. They know that the city has been governed for 25 years along that line of law and order. We have got a city that's a moral, clean city. We have never had any occasion to appeal to the people for anything other than some patriotic movement or some question that's a civic public question.

Q. Yes; but I mean in the matter of policy, the city administration policy; I think you said that the hall owners didn't have to be told, they knew what the policy was.

A. I said on that statement, if you remember, that men who has been associated with the city government for twenty-five or thirty years, and who is familiar with the policies of the present commission, that when they read in the newspapers of the objections that the city officials is raising against any groups presenting themselves to the city, that's all they need; they don't run in different circles, from what the governing body's wish.

Q. No; and the fact that you attended these meetings of veterans and others at the armory gatherings indicated the official approval——

A. Yes.

Q. —of the administration upon the kind of demonstration which those people were indulging in, didn't it?

A. I only attended one meeting, now. That was the big armory public meeting.

Q. You attended one of the Chamber of Commerce about the same time?

A. That's the one; that's the one.

Q. No, I mean a special, a smaller dinner of the Chamber of Commerce; didn't you?

A. A dinner, yes.

Q. Yes. Well it was a large banquet?

A. Yes.

Q. Several hundred people there, weren't there?

A. Oh, five—five or six hundred.

Q. Five or six hundred. And you attended that, and at that meeting you spoke?

A. Yes.

Q. And you did at that meeting give approval in a general way to the kind of demonstrations which the citizens of Jersey City were then indulging in.

A. I spoke to the people through the radio. I told them just my views and how I felt about it, and what was good for the welfare of the city.

Q. Now, if at the Chamber of Commerce dinner, let us say, you had thanked them for their invitation to you and their effort to support you, and had there said, "But, gentlemen, we don't need demonstration in support, and I ask you that we have no more such demonstration, and that Jersey City return to its peaceful habit of the past," don" you think that they would have followed that suggestion?

MR. MATTHEWS: I object to that question.

A. There is no occasion for that.

MR. MATTHEWS: He is asking the Mayor, does he think that the veterans, who are aroused because of the press, to protest against this unlawfulness, if he told them not to—why, that would be unpatriotic on his part; to tell a veteran not to protest against that.

THE COURT: He has answered the question.

Q. I understand the Court said you may answer it.

THE COURT: He has answered the question, is what I said.

MR. MATTHEWS: I didn't hear him answer.

MR. FRAZER: I didn't hear him answer either.

THE COURT: It is on the record.

MR. FRAZER: Will you read it, please?

(Answer read by the reporter.)

MR. MATTHEWS: There was no occasion for that.

Q. Don't you think it was your duty to do that?

A. No.

Q. You don't?

A. (The witness shook his head.) I think the duty of a Mayor, Counselor, is to from his own observation, ascertain for himself just what's beneficial to the people of the community in which he presides over. I did not think that that was an opportune time for me to disagree with the general feeling of the entire city, because I thought I would be deceiving them; I wouldn't be telling the truth.

Q. Well, Mayor, don't you think a great deal of this demonstration was a display of loyalty to what they considered your views?

A. No, no, no, no; they are patriotic; they are real, true Americans.

Q. But you did thank them——

A. Oh yes, yes.

Q. For their support of your views, didn't you?

A. Yes, sir.

Q. So that you in effect said "Your demonstration here is just what I like?"

A. No, I didn't say it in that manner.

Q. No, no, no. You didn't use those words, but that's what they gathered from it, don't you think?

MR. MATTHEWS: I object to what they gathered. How does he know what was in the minds of the veterans or the people there?

Q. Don't you consider it the duty of your police to protect persons who desire publicly to express views which are unpopular to the majority of the people of Jersey City?

MR. MATTHEWS: Now, if your Honor please, may I object to that? That is taking another court opinion and trying to take an isolated piece out of it.

THE COURT: It seems to me to be more or less the issue in this case, Mr. Matthews.

MR. MATTHEWS: The issue in this case is and nobody can misinterpret it, whether or not it is his right to stop these anarchists, these Communists, the Baldwins, the Ernsts, and the rest, from coming in and advocating riot and bloodshed.

THE COURT: You may answer the question.

MR. MATTHEWS: I object to the question.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. Will you repeat that, Counselor?

MR. MATTHEWS: Thank you for the exception, your Honor.

A. Will you repeat that, Counselor?

Q. Perhaps I can re-state it more quickly. Don't you consider it the duty of your police to protect, in Jersey City, those persons who wish publicly to express views unpopular to the majority of the citizens of Jersey City?

MR. MATTHEWS: I object to that question until "unpopular" is defined for the witness, what unpopular views are. That opinion uses "unpopular."

MR. FRAZER: I will withdraw that question. Will you read the other one, the one the Court has already ruled on?

(Question read by the reporter.)

MR. MATTHEWS: It being the same question, I object to the word "unpopular" unless it is defined.

MR. FRAZER: You have already objected and the Court has ruled.

MR. MATTHEWS: No, the Court ruled on the general objection to the question.

THE COURT: Substitute "meet with disapproval of."

MR. FRAZER: Very well, I am perfectly willing to accept your Honor's substitution.

MR. MATTHEWS: Your Honor will allow me an exception to your substitution, please?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. Do I answer?

Q. Yes, please.

A. Your question is, do I—should I suppress the police from interfering with anyone who may deliver a public address which is unpopular? Is that the sense of it?

Q. No, whether your police should not protect the man from those who are offering violence to him because they disagree with his opinions.

A. Well, it entirely depends, Counselor, what you mean by "unpopular." Do you mean——?

Q. I say "disagreed" now.

A. Well, I say, would you mean—this would be unpopular language if a Communist was to get on the public street corners and assail the President of our United States assail our system of government, advocating the overthrowing of our government, and words in that respect. Is that unpopular?

Q. May I ask you a question?

A. Or do you refer to something that's politically unpopular to me?

Q. No, I refer to most any kind of things which may be unpopular with certain groups. Suppose somebody got up and wanted to make a speech in public advocating birth control, let us say?

A. That's never been stopped.

Q. That might be unpopular in certain places, though?

A. Yes, but we never had any trouble with that.

Q. Now, suppose—what do you think about the advocacy of Naziism? That might raise trouble in certain sections, might it not?

MR. MATTHEWS: I object to all this as irrelevant to this issue and as simply an attempt to use the Mayor of Jersey City on this stand to wash the linen of these gentlemen back there, and their different propagandists throughout the country. Naziism wasn't at stake in Jersey City. It was Ernstism and Baldwinism and Communism and Thomasism, as representing the Garland Fund, the Civil Liberties Union and the rest of these Reds. Now, I submit that that question is not relevant to this issue. Naziism isn't in it.

THE COURT: Say "such as Naziism."

Q. Such as Naziism. I am perfectly willing to substitute the list which distinguished counsel for the defendant has just given me; any one of those.

MR. MATTHEWS: Well, I still object to the question. "Such as," doesn't change it.

MR. FRAZER: Well, I have withdrawn my question and I have substituted your list.

MR. MATTHEWS: "Such as" doesn't ever change it in the least.

THE COURT: It is withdrawn.

MR. MATTHEWS: Thank you.

MR. FRAZER: Your list is substituted for Naziism and such things.

A. Do you want me to answer?

Q. Yes.

A. I stated publicly here, and after examining Commissioner Casey's list of the thousands of permits that's granted, that we opposed no public utterances from anyone. Never has an occasion ever arisen that we were called upon to oppose any public utterance. In the first place, the criticisms and the objections always come from the people. That has never been filed or never been heard of in Jersey City prior to this trouble that I referred to a few moments ago on November 29th, as you stated. We have never had any occasion to oppose anyone. Therefore the City of Jersey City has never been called on to decide.

Q. But it now is in a position where it has decided that it will not permit any meetings of this type on account of the unrest?

MR. MATTHEWS: That is his testimony.

A. The disorder and the discontentment and the feeling of our people has brought it about.

Q. Yes, and that's the disposition of the Commission at the present time?

A. Yes.

Q. By the way, wasn't one of the Reds that you referred to Mr. Arthur Garfield Hays?

A. Yes, sir.

Q. Did you know that in a case in Chancery in '34 he represented the American League of the Friends of New Germany of Hudson County?

MR. MATTHEWS: I object, if our Honor please. What difference does that make? He would represent anybody, anybody. He doesn't disagree with his retainer, that fellow.

MR. FRAZER: Have you finished your scurrilous remarks?

MR. MATTHEWS: Those aren't scurrilous. I am dealing with somebody scurrilous. They are aptly proper for him. You don't dress a pig in the livery of a gentleman.

THE COURT: I hardly think, Mr. Matthews, that that is language that should be used in a court room.

MR. MATTHEWS: No, your Honor, I am sorry that I had to, but I wanted to answer Spaulding. He was so sarcastically inquisitive of me.

MR. FRAZER: I wasn't sarcastic, sir. I was quite serious.

MR. MATTHEWS: I can't imagine it.

Q. Now, in the case of the American League of the Friends of New Germany of Hudson County against Lewis B. Eastmead, there was a denial by Union City and Hudson County of a right to use a hall hired for the purpose of advocating, as I understand it, Naziism. The meeting was prevented; an application was made to the Court of Chancery to enjoin the denial of such hall. Vice-Chancellor Bigelow makes this statement:——

MR. MATTHEWS: I object to this testimony. It has to do with Union City, which is not the municipality involved.

MR. FRAZER: I haven't finished my question yet, sir.

MR. MATTHEWS: There is no need of putting on the record what does not belong there.

MR. FRAZER: Well, then, would you keep some of your remarks off of it, sir?

MR. MATTHEWS: Yes. I only do it in defense against your attempt to lug in what should not belong here.

Q. (Continuing.): Vice-Chancellor Bigelow used this language, sir——

MR. MATTHEWS: I object, if your Honor please, that this isn't relevant to this issue.

THE COURT: He hasn't finished the question. I will rule on it when he has.

MR. MATTHEWS: I object to——

THE COURT: If it is Union City, it has no relevancy to Jersey City if you are asking about matters of policy, has it?

MR. MATTHEWS: Well, your Honor has heard that it is Union City.

THE COURT: I know, I have read the opinion.

MR. MATTHEWS: So have I. You gave it to me the other day.

Q. (Continuing.): "Our law does not prohibit the public expression of unpopular views. It is lawful to advocate, for instance, the establishment of a dictatorship in America, or a Soviet form of government, or an hereditary monarchy, or the abolition of religious freedom, or other changes in our political, economic or social system, no matter how unwise or how shocking. If lawless elements in the community, instead of ignoring such propaganda, or meeting it by sound argument, resort to riot, it is the duty of police to protest the lawful assemblage and to repress those who unlawfully attack it." Is that the policy today in Jersey City?

MR. MATTHEWS: I object to that, your Honor.

THE COURT: You may answer it.

MR. MATTHEWS: Why should he be bound by the statement of Vice-Chancellor Bigelow?

THE COURT: He is not bound by the statement, Mr. Matthews. It is a question of whether that is his policy.

MR. MATTHEWS: Mr. Bigelow's opinion has never reached a court.

THE COURT: I understand that.

MR. MATTHEWS: Above.

THE COURT: He is not giving it any authority.

Q. Will you answer, Mayor?

THE COURT: Do you want it read again?

A. The Vice-Chancellor, from my experience, has never laid down any rules or regulations to govern any city. Where conditions may arise, that there is danger of life and property, I would be guided entirely by local conditions. I am afraid that the Vice-Chancellor could not direct me, if conditions presented itself, that warranted immediate action for the saving of the lives and property of the people.

Q. Now, you haven't yet answered me, whether the policy expressed by the Vice-Chancellor is the policy of the police of Jersey City.

A. I expressed my policy clearly to you. I told you that I would ignore any Vice-Chancellor's order, if the surrounding conditions was endangering the lives of people present, or endangering the peace and quietness of that community. The Vice-Chancellor never expects any police official to stand idly by because of some Red utterances where dangers are surrounding the lives of the people. He has to use his own discretion and own judgment. That's the law, in my estimation. Nobody can restrict me where there is a danger of a man or a woman or children losing their lives.

Q. Mr. Norman Thomas a week ago Saturday under a permit which was issued by the City of Newark endeavored to make an address in Military Park in this city at the time designated in the permit. There were ample forces of police in the park. A mass of hoodlums attacked

Mr. Thomas. The police removed Mr. Thomas instead of arresting the hoodlums. Do you think they did their duty?

MR. MATTHEWS: I object to that, if your Honor pleases. Why should he character what the police of one department did? The question in this case is what is the policy of the police department of Jersey City?

THE COURT: You will have to put in that, "if that had happened in Jersey City."

Q. Assuming that as a condition in Jersey City, would you think that the police of Jersey City had done their duty in removing Mr. Thomas instead of arresting the hoodlums?

A. That is exactly the condition that we have been fighting and resisting ever since we have objected to granting these permissions to talk. We have anticipated all this trouble. Newark foolishly granted that permission. They permitted this man to talk, and this uprising took place. Now, from what I read in the papers, by the head of the veterans there, he said that Norman Thomas brought that gang of hoodlums there. (Laughter in the court room.)

MR. MATTHEWS: Some of the hoodlums are here.

Q. Do you believe that?
A. Well, he said it.
Q. Who was it that said it?
A. A former Assistant District Attorney.
Q. Oh; Mr. Breitkopf?
A. Yes.
Q. Why, he was one of them, wasn't he?
A. He was one of what? Hoodlums?

MR. MATTHEWS: I object to that.

A. (Continuing.): Do you call him a hoodlum?
Q. I don't know—I thought he was in the party.
A. Well, I thought he was a high-class gentleman. He is a veteran, the head of the veterans of Newark.
Q. I thought he was one of the party; wasn't he, Mayor?

A. He was there. The papers——

Q. What was he doing there?

A. What has any public citizen got a right? There is a veteran; there is a man that fought for his flag. He wasn't out betraying his country, as Thomas was and the rest of them. That man laid his life down practically, and you deny him the right to be present, where an element of this character is brought in to address a public meeting.

Q. Did he do anything to keep peace there, or anything of that sort?

A. Who?

Q. Mr. Breitkopf.

A. I don't know. I am not familiar with it, Counselor, only what I read in the newspapers.

Q. I see. But you don't believe much in these civil rights, do you?

A. Not coming from an element of that character. Whenever I hear a discussion about civil rights and the rights of free speech and the rights of the Constitution, always remember you will find him with a Russian flag under his coat; you never miss.

Q. Well, you were then very accurately quoted from your address at the Chamber of Commerce on January 12; ou said exactly that.

A. Right; and that's the truth; and I have had a vast experience, Counselor; plenty of it.

Q. Mayor, what method do you use in handling Communists?

MR. MATTHEWS: I object to that question.

A. What method?

MR. MATTHEWS: Unless they are described.

MR. FRAZER: I am asking him——

MR. MATTHEWS: He has said that as to these fellows who were agitating to overthrow the Government by resolution, what his attitude has been.

THE COURT: The persons you define as Communists.

MR. FRAZER: Of course.

Q. I call your attention, Mayor, to a statement which you are alleged to have made in an Americanization Day address in Jersey City on the 25th of April. Did you make such an address?

A. Where? I don't recall it.

Q. Americanization Day in Jersey City, April 25; didn't you make a speech there?

A. I don't think so.

Q. The *New York Times* of April 26 quotes you on that occasion as stating that you would not permit a May Day parade to be held in Jersey City.

MR. MATTHEWS: Just a minute. I object, if your Honor please. He ought to be confronted with the *New York Times*.

MR. FRAZER: I am trying to refresh his memory.

MR. MATTHEWS: He says he doesn't remember. You can refresh it with a clipping, not with something you have typewritten, sir.

A. If you will recall the phrase, Counselor——.

Q. This was in 1937, not this year.

A. What year?

Q. 1937; April 25, 1937.

A. Where was the meeting, do you know?

Q. It was in Jersey City——

MR. MATTHEWS: Where in Jersey City?

MR. FRAZER: Well, I haven't that in my note.

Q. Do you remember having made an Americanization Day address in Jersey City on April 25, 1937?

A. No, I——

Q. At which you stated——

MR. MATTHEWS: Now, I object. He says he doesn't remember it and he is being confronted——

MR. FRAZER: Well, I am refreshing his memory.

THE COURT: Have you got the clipping, Mr. Frazer?

MR. FRAZER: I haven't the clipping. I have a transcript from the clipping.

THE COURT: Well, show it to the witness.

MR. MATTHEWS: The transcript, of course——

MR. MATTHEWS: We don't know whether that is the transcript of the clipping; if Mr. Frazer will guarantee that that is the transcript I will take his word for it, but he doesn't know if he got it from other counsel or where it comes from.

MR. FRAZER: I got it from a clerk in my office who made the copy.

MR. MATTHEWS: From the paper?

MR. FRAZER: From the paper.

MR. MATTHEWS: If you will guarantee it is from the paper I will submit to the question to the Mayor.

Q. You are reported in the New York *Times* of April 26, 1937, to have told the assemblage at the Americanization Day ceremonies in Jersey City that you would not permit a May Day parade in Jersey City. You won't, will you, anyhow?

A. Oh, I should say not.

Q. All right. Whether you said it or not that is your policy?

A. Do you mean to tell me that I would live up to my obligations of my office, a city constituted as Jersey City is, to permit an army of invaders to come into Jersey City to aggravate the peace and quietness and happiness of that city, and grant a permit issued by the officials of Jersey City? I say I would not.

Q. All right.

A. Because they have no place there in the beginning.

Q. Then you are quoted as having gone on to say: "If other cities would follow my lead in handling Communists there would be no Communists in the United States." Now, what is your method of handling Communists?

A. My method of handling Communists is to deal with them as an American public official.

Q. Yes, and how do they do?

A. Communists has no place in our American government; first they are not sincere Americans, they are endeavoring to deceive and overthrow the government.

Q. You have already defined a Communist, Mayor. Now, will you tell me how an American official should handle Communists?

A. Suppress them.

Q. Suppression?

A. If possible.

Q. And what methods of suppression would you use?

A. Well, just as we are suppressing them in this case, we are denying them the right to hold public gatherings because of the dangers of violence and bloodshed.

Q. And you don't think it is the duty of your police to protect them in the expression of their ideas?

A. How can anybody——

MR. MATTHEWS: He hasn't said that.

THE COURT: You may answer.

A. (Continuing.) To go into any country—now, I have been in Russia, I was in Russia for four days, the man don't live to get on a public street and assail the government in Russia, and I was told by one of the principal officials there he would be shot down.

Q. Well, do you think that's right?

A. That's their method and that's the system they are trying to adopt in this country.

Q. Is that your method in Jersey City?

A. No, it is not my method, it is not my method, but that's the government that the Communists is trying to instil into this country; they won't be allowed to do it in their own country but they come over here to display their loyalty to Soviet Russia.

Q. That was the Communistic method of suppressing?

A. That is their methods in Russia. That is, from my observation.

Q. What are your methods in Jersey City for suppressing this?

A. Law and order.

Q. What is that?

A. Law and order is obeying the law.

Q. And are you obeying the law when your police do not——

A. I am obeying the law.

Q. —protect citizens in the exercise of their constitutional rights?

A. There is no constitutional rights involved in this question, Americanism is involved in this question; there is no constitutional rights or the right of free speech. I told you from the record, Counselor, that we never denied a permit, we never denied anything up to this uprising. Now, my experience in Michigan and my experience in Pennsylvania and in Ohio leads me to believe that it is time that some public official would act.

Q. Now, can I summarize what I conceive the gist of your testimony on this subject by simple syllogism——

MR. MATTHEWS: I object to that unless he explains to the Mayor what a syllogism is.

MR. FRAZER: Well, the Mayor will very easily see what the syllogism is.

MR. MATTHEWS: He may not see what the syllogism is, it may be a scholastic syllogism or it may be a Freudian syllogism, the latter being very logical.

Q. You reason somewhat this way, do you not, Mayor——

MR. MATTHEWS: That is better; that is what he means by syllogism, reasoning.

Q. That everyone who asserts constitutional rights of freedom of speech, press and assembly is a Red or Communistic?

A. No, I won't say that.

MR. MATTHEWS: He never said such a thing, Mr. Frazer.

Q. That every Red or Communist should be suppressed. Therefore——

MR. MATTHEWS: No, I object.

Q. Therefore that every person——

MR. MATTHEWS: That is not his statement. He said if he did violence or advocated the overthrow of the Government.

Q. Therefore that every person who advocates the constitutional rights of freedom of speech, of the press and of assemblage should be suppressed.

MR. MATTHEWS: He never said anything like that; that is not his testimony.

MR. FRAZER: I didn't say so. I am just trying to ask if that is his reasoning. That is what I deduced from his reasoning.

MR. MATTHEWS: That is not his statement and I object to it. Those statements are preposterous to be put into the mouth of the Mayor.

A. Counselor, you don't get it clear. You could say to me, you should ask me whether or not I believe in an organized mob that is organized for the purpose of overthrowing the Government and creating violence and disorder to the extent of arousing the people similar to what we have got in Spain.

MR. MATTHEWS: Your answer to that would be no.

A. (Continuing.) If you get that before me I can answer that.

Q. Yes, I think you can answer that the way you want.

A. No, but that is the condition we are trying to suppress, that is the condition we are combatting today.

Q. How large an organized mob other than veterans have you had in Jersey City in the last eight months?

MR. MATTHEWS: Your Honor please, isn't the testimony in this case, that it is because of their action that they haven't had the mobs, they have prevented riot and bloodshed of other cities in Jersey City?

THE WITNESS: Am I permitted, Judge, to state——

THE COURT: Yes.

A. The Counselor don't bring out the facts that this is an organized movement to control labor of this country; when the move was made headed by John Lewis, that was a Communistic movement to control labor in this country the same as it is in Spain, and in Mexico and Russia.

Q. Well, John Lewis——

A. (Continuing.) Just a minute. I say that they failed, that they have been planning for ten years to obtain charters from the American Federation of Labor, the American Federation of Labor not knowing what their purpose was, and when they struck they struck with the purpose of controlling labor, in order to dominate and dictate the terms to this country but they failed and that gentleman sitting there was the instigator of it all.

MR. MATTHEWS: Meaning Mr. Ernst.

A. That Morris Ernst was the man who was the instigator of this movement in order to try to control this country.

Q. Well, you just mentioned John L. Lewis. I understood you to say the other day he is not a Communist.

A. John Lewis is just in there simply because he had to take and assume command of that group.

Q. Why did he have to assume command of that group?

A. Because he was in danger of his own safety in the miners union with John Brophy.

Q. John Brophy was in the miners union?

A. John Brophy was the man who ran against John Lewis and John Lewis branded him as a representative of Soviet Russia when he was a candidate as president of the Miners Union in Pennsylvania.

Q. Are all the rest of the CIO leaders—I understood you to say so—Communistic?

A. I would say the majority, but I want to say and qualify myself, Counselor, that the members of the CIO has been misled and deceived, that there is fine, outstanding Americans is members of the CIO and it is my duty and every other public official's duty to expose this to get them out of there.

Q. Well, now, how do you distinguish between the fine, outstanding American CIO's coming to you for permission to speak and the anarchistic Communistic Red CIO?

A. Because the rank and file never makes an appearance, never makes an application; it is always the leaders. Thousands of men have been brought into this movement because of force and because of fear. I will show you thousands and thousands of the automobile industry that has been driven into this movement because they are fearful of their lives.

Q. Now, a good many of these smaller unions, Mayor, are led by good, hardworking men, aren't they?

A. Small unions?

Q. The local unions of the CIO.

A. No, I won't say that. I charge that any man selected by the leaders of the CIO that is dispatched into any state such as Carney was dispatched into this state, such as every other leader has been practically dispatched into all the different various states, are selected only for one purpose and that one purpose is to simply browbeat and drive these people into that union.

Q. You still say they are Communists no matter what their political affiliations might be?

A. Oh, well, we won't get into the political affiliations, what difference does that make? We are discussing—you have got to realize that men of this character is anything that is beneficial to them.

Q. Well——

A. He will be a Republican tomorrow or a Democrat. They would prefer to have the Communist Party in control, that is their purpose, and they will mark time until that day arrives, and they thought that day had arrived with this American Labor Party. They are sadly mistaken. The American Labor Party is going to be wiped out because the American people realizes now who is behind the American Labor Party.

Q. They are going to be wiped out?

A. They are going to be wiped out just as sure as you are standing there.

Q. Now, in each one of the plants where the CIO is organized—there are some of them in Jersey City, aren't there?

A. There is one plant, the steel company has 800 members, and they are all high-class, hardworking men.

Q. Now, they are CIO men, they are not Communists?

A. No, they are not Communists but the men who put them in there are.

Q. Now, they have——

A. Through fear.

Q. —they have persons who head up their groups within the plant?

A. Because this steel company, Counselor, the heads of the steel organization, labor unions of the steel organization, I charge are associated with Brophy and the rest of these Communist leaders, so these men in Jersey City was compelled to step in line and follow because they had to.

Q. Well, now, we will take the 800 men in the plant who you say are good working men.

A. The residents of Jersey City, been living with me, I know them all my life——

Q. And in their plant organization they choose someone to be the representative in dealing with the management?

A. And they had a strike only a few months ago; did you know it?

Q. I didn't know.

A. I would like to explain that.

(Recess.)

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

INDEX.

	Vol. 1 Page
Docket Entries	1
Bill of Complaint	4
Schedule "A": Public Notice	21
Schedule "B": An Ordinance	22
Schedule "C": Notice to All Workers in Hudson County	23
Schedule "D": Letter to William J. Carney, Dated December 20, 1937	25
Schedule "E": Public Notice as to Public Peace, etc.	26
Schedule "F":	
Letter to Daniel J. Casey, Dated December 17, 1937	27
Letter to Samuel L. Rothbard, Dated December 20, 1937	29
Letter to Daniel J. Casey, Dated December 20, 1937	30
Letter to Samuel L. Rothbard, Dated December 22, 1937	32
Letter to Daniel J. Casey, Dated December 23, 1938	33
Letter to Spaulding Frazer, Dated December 27, 1937	34
Letter to Daniel Casey, Dated December 28, 1937	35
Letter to Spaulding Frazer, Dated December 30, 1937	38
Letter to Daniel Casey, Dated December 27, 1937	39
Resolution Adopted by Veteran Organizations, Dated December 28, 1937	41
Letter to Daniel J. Casey, Dated January 3, 1938	45
Subpœna ad Respond	47
Notice of Motion for Bill of Particulars	48
Motion for Bill of Particulars	49
Order Requiring Bill of Particulars	53
Proof of Service	54
Bill of Particulars	55
Answer of Frank Hague, Daniel J. Casey, Harry Walsh and The Board of Commissioners of Jersey City	56
Amendment by Way of Supplement	61
Affidavit of Morris L. Ernst	62
Amendment to Defendants' Answer	69
Further Amendment to Defendants' Answer	71
Opinion, Clark, D. J.	72
Discussion	132
Objections to the Form of Proposed Decree	139

Vol. I
Page

Comments and Objections to Findings of Fact Submitted by Plaintiff 141
Objections and Comments to the Proposed Conclusions of Law 145
Findings of Fact and Conclusions of Law 146
Final Judgment and Decree 155
Notice of Appeal 159
Proceedings at Trial 160

Daniel J. Foley—
Direct Examination 172
Cross-Examination 191
Re-Direct Examination 205
Re-Cross-Examination 205
Cross-Examination 209

David L. Clendennin—
Direct Examination 213
Cross-Examination 237

David Silverstein—
Direct Examination 245
Cross-Examination 268

James P. Sweeney—
Direct Examination 284
Cross-Examination 306

Nancy Cox—
Direct Examination 309
Cross-Examination 341

Jules Nydes—
Direct Examination 343
Cross-Examination 350

Aaron Gilmartin—
Direct Examination 357
Cross-Examination 366
Re-Direct Examination 372

Harry Arons—
Direct Examination 373
Cross-Examination 376

Bella Kussy—
Direct Examination 381
Cross-Examination 385

	Vol. I Page
Sol Chernofsky—	
Direct Examination	388
Cross-Examination	396
Morris Milgram—	
Direct Examination	402
Cross-Examination	411
Grace Milgram—	
Direct Examination	415
Cross-Examination	418
Re-Direct Examination	420
Morris Milgram (Recalled)—	
Direct Examination	421
Cross-Examination	422
Frances McKee—	
Direct Examination	429
Cross-Examination	435
Mildred Cox—	
Direct Examination	439
Cross-Examination	441
Ashley Carrick—	
Direct Examination	443
Cross-Examination	445
William C. Kernan—	
Direct Examination	447
Cross-Examination	450
Ashley Carrick (Recalled)—	
Cross-Examination	450
Re-Direct Examination	451
Timothy O'Brien—	
Direct Examination	454
Cross-Examination	465
Joseph Zarrella—	
Direct Examination	472
Cross-Examination	477
William Callahan—	
Direct Examination	478
Cross-Examination	481

INDEX—Continued.

	Vol. I Page
Francis Hunter—	
Direct Examination	482
Joseph Zarrella (Recalled)—	
Direct Examination	483
Francis Hunter (Resumed)—	
Direct Examination	484
Cross-Examination	488
Thomas Hurley—	
Direct Examination	494
Thomas Cometa—	
Direct Examination	499
Cross-Examination	507
Joseph C. Glavin—	
Direct Examination	514
Daniel Casey—	
Direct Examination	529
	Vol. II
Cross-Examination	790
Re-Direct Examination	838
Re-Cross-Examination	856
Mary Padla—	
Direct Examination	858
Jean Palmieri—	
Direct Examination	861
Lila Rocco—	
Direct Examination	864
Grace Pecore—	
Direct Examination	866
Cross-Examination	869
Dorothy Opitz—	
Direct Examination	871
Charles C. Webber—	
Direct Examination	878
Dorothy Opitz (Recalled)—	
Direct Examination	880
Jeannette Kasen (Stipulated)	881

	Vol. II Page
Charles C. Webber (Resumed)—	
Direct Examination	884
Samuel Macri—	
Direct Examination	889
Cross-Examination	964
Re-Direct Examination	1012
Re-Cross-Examination	1018
Raymond Chasan—	
Direct Examination	1019
Frank Hague—	
Direct Examination	1030
	Vol. III
Cross-Examination	1395
Re-Direct Examination	1555
William Callahan—	
Direct Examination	1578

	VOL. IV Original	Print
Stenographer's minutes of hearing in D. C. U. S., District of New Jersey, May 26, 1938	83	83
Appearances	85	83
Colloquy	85	83
Statement by the Court re tentative decree	107	100
Proceedings in U. S. C. C. A., Third Circuit	108	101
Minute entry of hearing	108	101
Opinion, Biggs, J.	109	101
Appendix—Findings of fact and conclusions of law of trial court	141	128
Final judgment and decree of trial court	150	136
Ordinance of January 22, 1924	154	139
Ordinance of April 15, 1930	155	141
Dissenting opinion, Davis, J.	157	141
Judgment	185	164
Clerk's certificate (omitted in printing)	186	
Order allowing certiorari	187	165

INDEX TO EXHIBITS.

PLAINTIFFS' EXHIBITS.

Ex. No.	Description.	Offered Vol. I Page	Printed Vol. IV Page
1	Handbill	177	1
2	Stenographic Record	324	3
3	Stenographic Record	324	3
4	Leaflet	417	5
		Vol. III	
5	Card	1583	6
6	No Exhibit.		
		Vol. I	
7	Circular	457	7
8	Newspaper Picture From "Sunday News", May 8, 1938	476	8
		Vol. III	
9	Card	1583	..
		Vol. I	
10	Applications	539	9
11	Permit Granted for Street Meetings, Religious	539	9
		Vol. II	
12	Correspondence, Rothbard and Casey	687	9
13	Letters, Frazer and Casey	687	10
14	Form Used in Connection With Street Corner Permits	787	12
15	Pawnbrokers' Descriptive Sheets	688	12
16	Telegram, Dated May 10, to Daniel Casey From J. Harlan Cleveland, and Attached Papers	688	13
17	Application, Telegraphic, by Wm. N. Callahan, Managing Editor of "The Catholic Worker"	605	15
18	12 Letters of Protest	684	17
19	8 Letters, Dated Prior to January 1, 1938, Protests	685	18
20	Batch of Additional Letters of Protest	685	20
21	Protest of Jersey City Real Estate Board, Dated December 30, 1937	685	21

INDEX TO EXHIBITS—Continued.

Ex. No.	Description.	Offered Vol. II Page	Printed Vol. IV Page
22	Resolution From Community Center, Dated December 30, 1937	686	21
23	Letter, American War Veterans of Italian Extraction, December 29, 1937	686	22
24	Letter of Protest From Hudson County Post No. 2	687	22
25	Two Undated Letters of Protest	687	22
26	Five Protests	691	23
27	Letter With Lynch Resolution	691	23
28	Letter, "A Citizen", May 21	692	..
29	Page From "Jersey Observer", May 7, 1938	720	25
30	Card With Name of Witness Casey	726	27
31	Correspondence Re Denials of Permits	788	29
32	Circular Containing President's Message	933	33
33	Notice, Dated December 28, 1937	1064	35
34	Postal Cards Re Meeting of Veterans	1064	35
35	Notice of Meeting of Veterans	1067	36
		Vol. III	
36	Correspondence Between Mr. Hamill and Mr. Frazer	1200	37
37	List of Jersey City Plants	1222	44
38	Anti-Placard Ordinance	1225	45
39	Page 5, "Newark Star-Eagle", June 11, 1938	1338	..
40	"Newark Sunday Call", November 21, 1937	1341	47
41	WOR Radio Speech	1557	..
42	Clipping "New York Times", December 27, 1937	1557	49
43	Clipping "Jersey Journal", January 13, 1938	1558	51
44	Page 9, "Jersey Journal"	1559	55
45	Clipping "Jersey Journal", January 7, 1938	1559	57
46	Statement of January 6, 1938, at Armory	1560	59
47	Statement of Mayor Hague	1564	..
48	Picture of a Meeting, 1929	1574	..

INDEX TO EXHIBITS—Continued.

DEFENDANTS' EXHIBITS.

Ex. No.	Description	Offered Vol. III Page	Printed Vol. IV Page
1	Clipping	1591	61
2	Clipping	1591	..
3	Clipping	1591	62
4	Clipping	1591	62
5	Clipping	1591	62
6	Clipping	1591	62
7	Five Cards	1591	62
8	Bureau of Identification Cards	1592	62
9	Picture, Captioned "Jerry O'Connell With Communist Herbert Benjamin and Socialist David Lasser"	1592	63
10	Library Book Re Garland Fund	1592	63
11	Affidavit in the "New Masses"	1595	65
12	"Akron Times Press", May 27, 1938	1445	..
13	"Akron Beacon Journal"	1446	..
14	"American Republic Magazine" Re Dubinsky	1595	66
15	"Newark News", November 23, 1937, Item	1595	67
16	"Jersey Journal", Item of May 2, 1938	1595	69
17	Clipping "New York Times", May 24, 1937	1596	71
18	Clipping "New York American", March 9, 1937	1596	71
19	Clipping "New York Times", June 7, 1937	1596	71
20	Clipping "New York Times", March 29, 1937	1596	71
21	Clipping "New York Times", January 31, 1937	1596	71
22	Clipping "New York Times", January 15, 1937	1596	71
23	Clipping "New York Times", March 4, 1937	1596	72
24	Clipping "Herald Tribune", February 3, 1937	1596	72
25	Clipping "New York Times", April 24, 1937	1596	72
26	Clipping "New York Times", February 31, 1936	1596	72
27	Fish Report—Portions Identified	1590	73
28	Copy of Writ of Mandamus	1597	82
29	Copy of Return on Writ of Mandamus	1597	82

AFTERNOON SESSION.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Mayor, do you remember at the Chamber of Commerce meeting of December 27th of last year, or in your statement, and then at the Chamber of Commerce dinner immediately thereafter——

A. Well I was in the center of a question, Counselor, and I was not permitted to answer.

Q. Were you? I had forgotten that.

A. Yes. I would like to get that question. I was just about to answer it when the court adjourned.

MR. FRAZER: Do you remember what the question was? Could you read it?

THE REPORTER: I haven't it here, but the question referred to the strike at the steel plant and the Mayor said he would like to explain it to you.

A. Yes; and they adjourned then.

Q. Very well.

THE COURT: I almost always adjourn in the middle of a question.

Q. I had forgotten it hadn't been answered.

A. The question was in regards to the Crucible Steel. They have a plant in Jersey City of some eight hundred, six or seven or eight hundred men there, seven hundred, I think it was, and you asked me about that; that strike took place and it was handled just in the ordinary manner, in a police routine manner of handling strikes. Of course, we prohibited the mass picketing, which is not allowed in Jersey City, and we adjusted the number of pickets that was to take place, which was acceptable to the men.

And the strike was settled favorable to the men. I think it is only fair that I should say that Mr. McCombs,

who was president of that union, that local, paid quite a compliment to the officials and to the police, which was published in the newspapers, and then the following day the heads of the CIO went after Mr. McCombs, brought him into a meeting and insisted that he was to change his entire statement.

MR. FRAZER: Now, I think that this is not responsive.

A. Oh, yes, it is concerning this strike.

MR. FRAZER: No, not what Mr. McCombs said.

THE COURT: Unless you know of your own knowledge.

MR. MATTHEWS: He said it was in the paper.

THE COURT: Oh, I beg your pardon, I didn't hear that.

THE WITNESS: The papers published it.

MR. FRAZER: I don't see that that makes any difference, whether the papers published it.

A. Well, I think it is rather important, Counsel, to show the counsel the manner in which strikes are adjusted and that in Jersey City, particularly in the center of all this controversy the CIO strike was in progress.

Q. And that was settled?

A. That was settled.

Q. In an orderly way, indicating that the CIO is capable of handling its strikes in an orderly way?

A. And that the police are capable also of handling strikes in an orderly way without any disorder or any violence. But I wanted to show Mr. McCombs' letter in the newspapers complimenting the police and complimenting the officials.

Q. That is what I understand; there was an orderly settlement?

A. And then he put a denial in the papers two days after.

MR. FRAZER: I move that that be stricken out and I think the Mayor has fully answered my question.

A. (Continuing.) I wanted to show, Counselor, that the CIO officials demanded that he retract it and they made him retract it and they threatened him if he didn't retract it.

MR. FRAZER: May I ask that that be stricken out, your Honor?

THE COURT: Yes.

Q. Now, coming back to the period of December, 1937, Mayor, you made a statement which you have referred to before, and you also made an address before the Chamber of Commerce at its fiftieth banquet, as you recall?

A. Yes.

Q. And as I recall it, at that time you stated that the unrest in Jersey City started at the time of the seamen's strike, is that right?

A. That started.

Q. Now, that was the International Seamen's Union, was it not?

A. Yes.

Q. And that was the American Federation of Labor?

A. Prior to that it was.

Q. But it was at that time?

A. No, I don't think so.

Q. I was just wondering whether you have confused——

A. No, Harry Bridges was one of the first went over to the CIO.

Q. Harry Bridges was not in that union at that time.

A. But Harry Bridges was at the head of the seamen's union all over the country.

Q. Harry Bridges' union, Mayor, is the National Maritime Union, isn't it?

A. It is now.

Q. Yes.

A. I think that's the name.

Q. And this strike that you refer to as being the beginning of the labor troubles was the International Seamen's Union, and that was an A. F. of L. union.

A. I don't know whether that—it was one of Bridges' outfits.

Q. Well now, as a matter of fact, Bridges never came over, did he?

A. Oh, yes.

Q. To Jersey City?

A. No, but Bridges was in New York at the time. Why, the public press carried headlines for weeks about Bridges coming to New York to take over Joe Ryan's whole outfit, and to take it over to the seamen's strike, into the CIO.

Q. But Bridges at that time was representing the National Maritime Union?

A. From the coast?

Q. No; when he was in New York he was representing—that was his CIO union, the National Maritime Union.

MR. MATTHEWS: International, isn't it?

MR. FRAZER: No, sir.

A. No, you are in eror because——

Q. Well——

A. In Hoboken they arrested two of Bridge's men for highway robbery and assault, who was brought on by Bridges from the Coast, and got fourteen years for it.

Q. Now——

A. Their statement publicly states that Bridges was their superior.

Q. I don't know whether any of Bridges' men came in or not, but as a matter of fact the strike was not a Bridges' union, and there was a confusion because Bridges' union was the National Maritime Union, whereas the A. F. of L. was the International Seamen's Union. That was the one that was in that strike, wasn't it?

A. The Seamen's Union was in the strike.

Q. That's right.

A. On the eastern coast here?

Q. Yes. And it was the National Maritime Union, Bridges' union, that was in the strike on the West Coast, which you spoke about.

A. And do you say that Bridges had nothing to do, Counselor, with the Seamen's strike?

Q. Well, nothing to do with the International Seamen's Union?

A. Oh, you are in error, Counselor. Bridges is the supreme—he is the boss of it all.

Q. CIO, is it?

A. Yes, yes, he came on—he came on from the West Coast to take over Joe Ryan's outfit, which is the longshoremen's untfit, covering the entire East Coast, and he publicly stated that he was there for that purpose, head of the seamen's strike.

Q. Well, all right. Now let's—I understand you to say that prior to that you had no labor difficulties in Jersey City?

A. None that amounted to anything. We had the ordinary little labor disputes, which doesn't amount to anything, no bloodshed.

Q. Well, do you remember the Miller Furniture strike in 1935?

A. The what?

Q. The Miller Furniture Company?

A. The furniture company?

Q. Yes.

A. Where is that located?

Q. I will give you that in a minute. Don't you know the Miller Parlor Furniture Company in Jersey City, such a company?

A. Is that the Gray Furniture Company? Where is it located?

Q. That's what I am trying to find out, Mayor, but I don't seem to have a note of it.

THE COURT: I think it may be in this record somewhere.

Q. I am told that it is on Orient Avenue. Does that refresh your mind at all?

A. Yes, yes, I recall that. Is that the concern which moved from Brooklyn?

Q. 261 Orient Avenue, they came in from Brooklyn.

A. I think so.

Q. Yes. Now you had quite a little trouble there in '35, didn't you, with them?

A. Oh, I wouldn't say that it was trouble, Counselor. There was a lot of annoyance from this group that came from New York and Brooklyn, as usual. They wanted to start parades and mass picketing, and of all descriptions of that kind, and then they brought these young men over there that was publicity seekers, who started to make a lot of——

Q. Well, that was an A. F. of L. union, though, wasn't it?

A. I don't know.

Q. Well, in '35 the other union wasn't in existence, was it?

A. I presume it was.

Q. Yes.

A. I am not sure.

Q. Now, I have a record here from the police department of Jersey City, which is part of an exhibit, which would indicate that on December 16, 1936, there was a strike of the Baltimore Transfer Company which lasted up to February 10, 1937, Do you recall that strike?

A. At Baltimore, yes. They had a transfer station in Jersey City there.

Q. Well, there were a series of those companies at that time whose employees were striking, were there not?

A. Well, that was the teamsters, that was a teamsters' strike. I think you refer to.

Q. Yes, your records would indicate that there was the Langer Transport Corp., the Kasten Brothers Transportation Company, the Railway Trucking Company, the Baltimore Tranfer Company, all at that time. That was a pretty big strike, wasn't it?

A. Yes, I think it was settled very rapidly other than the Baltimore Transfer, I think there was some question and I think they moved out. I tried to prevail upon the men, I talked with the men and made a public statement, if I am quoted properly, and said that it was an outrage for these men to go on strike at a time when so many men was out of work and that it would be a great hardship upon the families of these men if the strike took place. Now, the day after 45 of the strikers or the proposed strikers—working men came to my office and pleaded with me to continue my attitude not to let the men strike because they felt that the hardship would fall upon them and their families, but I couldn't prevail, it was no use, the company moved out, but they moved back again after.

Q. What did you do with the Miller Parlor Furniture Company case?

A. Is that the one down below?

Q. That is the one that we were just referring to in Orient Avenue.

A. They came in Jersey City, we didn't know they were in Jersey City until a group came from Brooklyn and started to picket. We never knew there was such a company in Jersey City until then. Then, of course, we had to step in and police it. We had considerable annoyance there—I wouldn't say it was trouble, all these foreign groups coming from Brooklyn and New York to picket, create all sorts of scenes.

Q. Well, now you had another strike in the Crucible Steel when it was an A. F. of L. union, didn't you, in 1932 for something over a month?

A. I think that was the strike I appeared at, yes; we adjusted that.

Q. Now, do you remember anything about a group of teamsters and chauffeurs who were trying to organize a union in 1934?

A. You mean——

Q. In May, 1934.

A. The bus owners, the bus strikers.

Q. They were teamsters, chauffeurs and garagemen, trying to incorporate a union there.

A. The bus drivers, we had considerable trouble with the bus drivers.

Q. In '34.

A. No, I don't recall the date, the year rather. I disbanded that union. I found that four gangsters was the head of that union. I drove them out of the city and disorganized the union.

Q. Well, now, at that time you were quoted—I just wanted to see whether this refreshes your memory—in the "New York Times" of May 2, 1934, as having sent an order to Director Wolfe, Director of Public Safety he was then, wasn't he, Thomas J. Wolfe?

A. Yes.

Q. And you said at that time, according to the "New York Times," "The nightstick must prevail," remember saying that, "Every member of the police department shall be expected to do his full duty, if by chance he is thrown in conflict with any of these racketeers?" There is an explanatory parenthesis, group of teamsters, chauffeurs and garagemen, "who sought papers of incorporation." Does that refresh your memory at all?

A. But that is not the condition, Counselor, there was no incorporation; if that was an element that I classified as an undesirable element that was endeavoring to come in and take control of the labor movement, then if that language is properly quoted, which I have used that language very often, yes.

Q. You have?

A. Yes. Then it was because of that, because I have always made it a rule to protect the workingman, that is, the rank and file of the labor unions, against the invasion of dishonest leaders.

Q. Now, do you think the rest of this is correctly quoted? "I shall expect that the people of our city shall be protected against the invasion of their rights by such an element."

That sounds like you, doesn't it?

A. I think so.

Q. "It is my wish"——

A. I would like to know the element you refer to. That's just a little bit confusing.

Q. The element referred to apparently, was this group of teamsters, chauffeurs and garagemen, who were trying to incorporate a union.

A. Oh, I think—just a minute, now. We had quite a lot of difficulty. We had a lot of men who were assaulted and beaten over the head with blackjacks and knives and everything else, and we arrested quite a number of them. I think you are referring to that. And I think we went in there and endeavored to break up that whole outfit that was in there, taking over that union. That's what that was. And we did break them up. We turned it back to the union itself.

Q. According to the——

A. They were forcing themselves on the rank and file.

Q. According to the "Times'" report that quotes you, you went on to say: "It is my wish that every degree of police authority be exercised and those in the movement made to understand that there is no room within the boundaries of Jersey City for such characters to carry on their nefarious trade."

That sounds like you, too, doesn't it?

A. Well, it sounds very near like me.

Q. Now, let's go back a little further. In the "New York Times" of December 11, 1932——

MR. MATTHEWS: 1932, did you say?

MR. FRAZER: Yes.

MR. MATTHEWS: Thank you.

Q. You are quoted as having said that you were ready and willing to lead a movement for the protection of employers against so-called organized interference with their businesses.

A. I have always assumed that attitude. That has been always my attitude. My expression at that time, and my expression at the present time, is because I have felt that the man who provided the payroll has as much right to protection as the man who benefits by the payroll, because we can't have any employment if the payroll is destroyed. I have always tried to prevail and impress upon the workingmen that the man who provides the money to maintain his little family and support him is entitled to protection.

Q. Well, that——

A. Otherwise there would be no payroll.

Q. You were accurately quoted then, weren't you?

A. (The witness nodded.)

Q. Now, this was back in 1932, before the days of the Newspaper Guild, too?

A. Yes, but this Zerner, the young man that writes for that "Times," he is——

Q. Was Zerner there in '32?

A. Oh, he has been bad for twenty years; ever since he has been there.

Q. But this sounds like a fair quotation?

A. Yes, I presume that's in there.

Q. Now, you are quoted in that same newspaper account as saying, "I wish to make myself clear to every employer who has been visited by this terrorism that I will hereby guarantee to him if he will follow my suggestion that every ounce of protection will be given and that he need have no fear as to what the outcome of this controversy will be."

A. What year is that?

Q. That's 1932; December 10th. The statement was issued and appeared in the "Times" December 11th.

A. Let me clear that up, will you?

Q. Sure.

A. There was a trucking company by the name of M. & M.—it was McNulty—no, McArdle; a man named McArdle had a trucking company that was appraised at close to $500,000. He had, I think, twenty-four big motor trucks and so on. He had quite a prosperous business. McArdle went into the receivership and the receiver called to see me and told me about the conditions of the employees and the men that was handling his affair and his business. He told me that a truck would leave at eight o'clock in the morning and would never return until twelve at night, with one delivery. That would be time and a half or double time. The fact was that he was driven out of business. If he was to censure a man for intoxication, they brought his truck back and destroyed it by accidents or by being mishandled. He was set upon and he was assaulted. The result was that every time he made a complaint, five men walked into his place with guns in their pockets and threatened to kill him if he didn't shut his mouth, and put back to work these men. That is what brought my statement out. I went into that company and I broke it up and I arrested the ringleaders, and we did apply the night sticks, because we found it necessary to apply night sticks on an element of that character; and we will apply it again tomorrow if they make their appearance in their efforts to go to work and take over these various industries and business is destroyed.

Q. That is what you meant by thugs and rough-house representatives, when you advised them to be discharged, is that right?

A. Yes; to the extent that we arrested four of them and brought them before Vice-Chancellor Fallon and we charged them right in front of the Vice-Chancellor, who had appointed the receiver, and told him there who they were and what they consisted of.

Q. Now, in addition to those statements did you say this at the same time:

"The day has arrived when no man even dares to suggest whom he may hire or whom he may discharge."

A. That was the element—they took that man's business from $500,000 and he could not sell it for $25,000 the day we stepped in.

Q. "He" meaning the employer?

A. Mr. McArdle; and he lived in the same apartment house that I lived in, strange as it may be, and I never knew any of his difficulties or troubles.

Q. Going on: "He has not even the right to decide what the prevailing scale of wages should be in his particular business, in order to realize a fair profit on his investment."

Now, do you think that labor should not have anything to say about what their prevailing scale should be?

A. Labor has always had a right in Jersey City to legally, lawfully, function, and to do anything that they thought was beneficial to their cause. I have always advocated that. I have always helped in that direction. But the time had arrived that when certain elements got into labor, that was taking over all these industries, and demanding that they be considered in everything that took place in front of the men, to the extent in some instances they would insist upon playing double, they would insist upon playing for the men and playing with the industry—the result was that we had to drive them all out.

Q. And so you did drive them all out?

A. We drove them out, every one.

Q. Now, did you drive every one out whether they were guilty of this thuggery that you have been referring to, indiscriminately, because they were a member of that union?

A. No, no, no. I was pretty careful. I knew in what direction I was going, Counselor.

Q. How did you learn that?

A. From twenty-five years dealing with them. I know the workingmen of Jersey City, Counselor. I was raised

with them all. And I have done as much for labor in any direction as any public official in this country.

Q. What was that union——

A. I am not opposed to labor, Counselor.

Q. What was the union which you said left——

A. That was the Teamsters' Union.

Q. No, I don't mean that one, but you said a moment ago, before you got discussing this one, that there was a union which left and which subsequently came back.

MR. MATTHEWS: He didn't say it was a union. He said a concern.

MR. FRAZER: A concern. I beg your pardon. That's a slip of my tongue.

Q. A concern.

A. Well, that was the Baltimore Transfer.

Q. Yes.

A. There was no violence or no disorder. There was nothing. No comments about that strike. Those men were striking because——

Q. What made them go out?

A. Well, a general strike of the teamsters in that city and county for an increase in wage.

Q. And was that a proper strike?

A. Well, apparently, I would say 90 per cent. of the industries and their lawyers settled and adjusted their differences satisfactory to the workingman—all but the Baltimore Transfer, and they stated they could not settle it because it would put them out of business. So they had to move back to New York. Well, then they came back again in about three months.

Q. Was that the strike which brought about the removal of the Great Atlantic and Pacific Tea Company from Jersey City?

A. No, the Great Atlantic and Pacific, that trouble was fifteen years ago.

Q. That was still longer ago?

A. Oh, fifteen years ago.

Q. That was a labor difficulty, though, wasn't it?

A. Yes, yes. Some of it was.

Q. And that had to do with teamsters, too?

A. Teamsters. This is the same group.

Q. The same group?

A. Yes, that I had the trouble with the M. & M.

Q. So in that case the teamsters' group was not put out, was it?

A. No, there was a man named Hart that was the head of it, that was the man that caused all the trouble. He died since.

Q. Was he at the time of the Great Atlantic and Pacific trouble——

A. Yes, he was the head of that whole group.

Q. Yes.

A. And he was the man who caused all the trouble.

Q. Well, he wasn't put out at that time, was he?

A. No, it was later.

Q. Now, do you remember stating to the industry that came back, after it had left, "We took a hand in reorganizing labor without regard for national heads of organized labor themselves. The leaders who planted a feeling of hatred in the minds of the men are gone, and in their places are leaders with whom you can deal." Do you remember making such a statement?

A. No, I don't know—that was my mind, though. That was the condition that was brought about.

Q. That's what you had in mind when you changed after you——

A. Well, that condition was brought about—you see, there was quite a feeling of unrest in Jersey City, and in every other city. That was at the time that that racket business was at its full height all over the country, and of course we were blessed with it the same as every other city, and of course after I got the labor conditions so adjusted that I could invite industry back and that I could assure the

present heads of industries that was located in Jersey City that they could feel secured, that their investment would be protected, naturally I went in and tried to adjust affairs with them, and said, "Come on, let us move forward."

Q. Now, you referred the other day to the McClintic Marshall strike.

A. Yes.

Q. That was perhaps the most serious one you ever had, wasn't it?

A. That was the most serious one we ever had.

Q. And in that case it was the labor union which was the aggressor, wasn't it?

A. Yes.

Q. And wasn't the labor union at that time supported by your administration?

A. Yes. Will you allow me to explain this?

Q. Yes.

A. Theodore Brandle was the head of the ironworkers in the State of New Jersey, was the head of this local in Jersey City and Hudson County. Now, Theodore Brandle came to me and told me about the difficulties that he was having with the McClintic Marshall Company and that they were about to go into a $24,000,000 contract, I think with the State, for the Pulaski Highway.

Q. Yes; they were running open shop?

A. Yes, they were.

Q. Had been right along?

A. Yes, and he told me that his group headed by Mr. Moran had opposed McClintic Marshall all over the country and he wanted to know was there any possible chance of me taking up with Governor Moore at that time an adjustment whereby his people could be employed. He told me that he had several thousand men idle and that this job would probably employ seven or eight hundred men permanently for probably two years. I told him that I would do everything possible to see if we could make arrangements to get his men employed. I said to him then, I says, "The prevailing scale is $16. What is my under-

standing with you about the prevailing scale? They object, as I understand it, to the $16 scale. I understand they want to go to the $14 scale." He says, "All right, we will accept the $14 scale. Can you arrange through the Governor and the directors of the Highway Commission an adjustment whereby my men will be put to work?" There was a meeting in the Governor's office at which the Highway Commission and all the heads of the McClintic Marshall Company was there. The Governor argued that he thought it was unfair to bring outsiders in to be employed on this Pulaski Highway when at the time there was thousands of ironworkers in Jersey City and Hudson County idle. So we prevailed upon them and they agreed. Commissioner Gelin was president of the highway board. They agreed to employ every one of Brandle's men, they wasn't to question his card, they wasn't to question his button, that 750 men were to be employed. That was agreed on in the Governor's office. Then Commissioner Gelin wrote me a letter and told me that he had adjusted this whole affair, that these 750 men were to be employed at $14 a day, which was acceptable to the men, and when Commissioner Gelin went to see Brandle, Brandle told Commissioner Gelin to go to Hell, why he done that—that started the trouble.

Q. Well, now, as a matter of fact——

A. (Continuing.) That started the trouble with Brandle and I too because when I found out that that was the condition that was existing in his mind, that the men had an opportunity for two years' work, it was cast aside simply because he had changed his mind after he had asked me to go in and use my good office as Mayor to try to adjust these differences, that started the trouble between Brandle and myself, not between the men. A week after or probably a month after there was a murder committed.

Q. Now, Mr. Mayor, the situation, however, was that the McClintic Marshall Company came in with non-union labor, did it not?

A. Yes. They hadn't started, Counsel.

Q. They had a right to do that?

A. They hadn't started, Counsel. They completed the job with non-union labor.

Q. They were willing, as I understand, to settle with the union?

A. Yes.

Q. And employ the union people on an open shop basis?

A. Yes, every man on the job was to be a union man.

Q. That wasn't in their contract?

A. No.

Q. And they had already got their contract?

A. The contract was awarded and they hadn't even put a piece of machinery on the ground yet.

Q. And the A. F. of L. union, through its leader, Mr. Brandle, refused to accept the compromise?

A. After he had agreed with me to go down and open up negotiations, that is what disturbed me, we had the thing adjusted; these men would have been employed for two years at $14 a day instead of eating snowballs and getting nothing.

Q. Did you call that a union racketeer there?

A. Well, it was no strike, I wouldn't consider it a strike.

Q. It wasn't a strike because they were employed?

A. No, they immediately started to set up their picket lines, they started to set up their picket lines with three or four pickets here, three or four pickets there. The newspapers started to write it up and there was quite a commotion. They were endeavoring to obstruct the work of these non-union men and the police was there, I think we had two hundred police there.

Q. Yes, and they——

A. There was no disorder up to the time this man was killed.

Q. Well, wasn't there a great deal of disorder there, a mob of the workers coming to work and all that by the laboring men?

A. I wouldn't say there was any. The only disturbance we had was when this man was killed. We simply cleaned the place out. We didn't allow pickets, we didn't allow anything then.

Q. Well, as a matter of fact, the McClintic Marshall people themselves had quiet an army to protect their men at work?

A. Yes, and they started to shoot, which was causing us considerable trouble.

Q. Well, weren't two hundred Jersey City police sufficient to assure these men the right to work?

A. Well, their watchman shot two of the ironworkers, shot one through a lung, and there was quite a commotion there.

Q. Was there anybody ever apprehended for that activity there?

A. Oh, yes, the watchman was arrested.

Q. Was anybody ever convicted of the murder?

A. No, they were acquitted.

Q. Acquitted?

A. They were tried.

Q. Up to that time your relations with Mr. Brandle had been very friendly, had they not been?

A. Very.

Q. Now, do you remember having received a letter from the Hudson County Central Labor Union, A. F. of L., complaining of conditions there in relation to picketing by strikers in the last weeks of 1936?

A. What was the complaint about?

Q. Well, it was addressed, as I understand it, to you, and I am reading here from a clip from the Jersey *Journal*—I think it is the Jersey *Journal*—it is a letter addressed to you, sir, in which they say: "The attitude of the police board toward picketing by strikers in recent weeks is not consistent with the attitude you expressed as Mayor."

THE COURT: Excuse me, I won't interrupt the question this time. I will adjourn for ten minutes.

(Ten-minute recess was here taken.)

(Following a short recess.)

MR. MATTHEWS: Mr. Frazer, please, may I address the Court? I am just in receipt of a notice that my confreres have given me at recess, which says that one of the witnesses whom we subpœnaed, one O'Connell, known as Jerry and known as Congressman in this case, wrote Judge Clark as follows:

"Because the conference report on the Wage and Hour Bill, the amendments to the Walsh Healy Act and other bills of vast importance to labor and the people generally will be considered on the floor tomorrow, because of the absolute necessity that I discharge my duties as Congressman, and because of my constitutional immunity, I cannot comply with the subpœna duces tecum served upon me today to appear as a witness in behalf of Frank Hague and other defendants in the case now pending before your court. I take this occasion to inform you that my trip to Spain as well as my travel in France, England and Ireland, where my father and mother were born, was the only trip I have ever made to Europe, that the trip was made entirely at my own personal expense, and I therefore do not have in my possession any books, papers, documents or records or receipts for money received from any other source in connection with this trip. I have no books, papers, documents or records concerning any of the organizations or publications listed in the subpœna, as I have no connection whatever with any of them.

"I have never received any fees for any appearance made by me at any meetings or conferences in the United States. Occasionally some of the organiza-

tions, such as Labor's Non-Partisan League, the C. I. O. and others, have reimbursed me my actual traveling expenses. I assure you that my refusal to comply with the said subpœna is not meant as any affront to your honorable court or yourself."

I understand, your Honor, that this has been given to the press. I want to say, if your Honor please——

THE COURT: I telegraphed him acknowledging receipt of this letter and asking him what he wants done.

MR. MATTHEWS: Yes, your Honor. All right. I want to say in reply to that that while Mr. O'Connell may hide behind his constitutional immunity, he very carefully excludes certain organizations in his answer to the subpœna because he said, "I have received occasionally from the Non-Partisan League and the C. I. O. and others reimbursement for my actual traveling expenses." Now, what we want is not that kind of a statement by Mr. O'Connell, but we want his statement under oath on this stand. Now, if the Congress, as the prints tell us, is going to adjourn shortly I think it would be nice, your Honor, for your Honor to say to this man in further telegram that since this case will last at least another week he will be welcome in this domain of yours during that week, and if he doesn't want to come and wants to take advantage of his immunity, as he puts it, we will go to Washington and take his testimony and we ask you for an order for it. In other words, what O'Connell says here and what O'Connell threatens to do are two different O'Connells apparently. So we respectfully submit that since your Honor has, and rightly so, notified the Congressman that he does not have to appear tomorrow, and indeed as a real Roosevelt Democrat I hope he stays there if he can do any good to the program now under consideration of the Congress, but

when he is through I think he should be told that he is welcome here.

THE COURT: I didn't notify him of anything except asking him what he wanted done.

MR. MATTHEWS: I was informed that you had notified him to some effect, so I thought we would make public the letter and I thank your Honor for the opportunity to address the Court.

Q. Now, Mr. Mayor, wasn't it true that about the time of the McClintic Marshall trouble there was also a strike on the Medical Center in Jersey City?

A. No, we had no strike on the Medical Center; there was some little dispute about the setting up of a boiler in the engine room, that was all. I think that lasted a day.

Q. Well, now, to resume the question which I started, or to read the letter which I started to read when the recess came, I will start from the beginning:

"The attitude of the police force toward picketing by strikers in recent weeks in Jersey City is not consistent with the attitude you expressed as mayor to a committee representing the Central Labor Union of Hudson County which conferred with you several weeks ago. Notwithstanding your announcement that peaceful picketing, the right of which has been established by the courts, would not be interfered with, there have been frequent and flagrant examples of suppression of demonstrations, civil liberties and rights of assemblage by police officials on various grounds. They have ruled arbitrarily that no strikes were in progress, that the strikes were outlawed, or that the unions conducting them were not legitimate. We denounce this attitude as subterfuge, apparently designed to defeat labor in its struggle for better working conditions. Viewed from a legal standpoint, it is a usurpation of power by the police which has no basis in precedent or even in custom. Labor alone and not the police departments

are the judges of whether a strike is a strike or not. In the ranks of labor there is no misunderstanding about these vital and fundamental questions. We believe that there should be no misunderstanding of these questions where public officials are concerned. The Central Labor Union of Hudson County is determined to protect these rights fought for and gained by labor over a period of centuries. We helped to elect officials who recognize and protect these rights. If necessary, we shall protect them by legal proceedings. We helped to elect officials who assure us that any legal action requiring us to establish these rights, common throughout the length and breadth of the United States, but denied in Jersey City, will be unnecessary. Towards that end we look forward to your early reply to this letter."

MR. MATTHEWS: Who signed it?

Q. Do you remember receiving that letter?

MR. MATTHEWS: Who signed it, Mr. Frazer?

MR. FRAZER: It hasn't a signature in the account. It is from the Central Labor Union.

MR. MATTHEWS: Well, surely, somebody——

MR. FRAZER: I am asking him whether he remembers receiving such a letter.

A. Well, I ought to be allowed to answer that, counsel.

MR. MATTHEWS: All right, go ahead.

A. Have you got my reply, Counselor?

Q. I don't think so, Mayor.

MR. MATTHEWS: Maybe we have. Have we a reply to that letter?

Q. What was your reply, do you remember?

A. I don't recall. Have you got it?

Q. No, I haven't it. Do you remember receiving such a letter?

A. I don't think I replied to that letter.

Q. You did receive it?

A. I don't know, but I recall a letter similar to that. That letter was prepared by Morris Isserman, the noted Communist, who found his way into the Hudson County Federation of Labor as counsel.

Q. That was A. F. of L. though, wasn't it?

A. Yes, yes. If you will let me explain. They found themselves confronted with a half a dozen locals that promptly appeared every meeting day, every meeting night, and was running the whole works in Hudson County, because of the lack of interest of all the various other units. After they realized that the Communists and the Reds had gained control of this labor movement, which Morris Isserman was driven in there purposely, and was sent in by Mr. Ernst, under his leadership, they threw him out. He was compelled to resign. It was he who prepared that letter. That is not the expression of the labor men of Hudson County. That was prepared and tricked into by Morris Isserman, who has appeared for every Communistic movement in this state.

Q. Now those appearances, at one of those appearances before the Commission you stated, did you not—I am reading now from the testimony of Commissioner Casey in the earlier injunction suit, that you would allow peaceful picketing by the American Federation of Labor, bona fide picketing, with no busybodies interfering, and that you would not recognize the Communist unions.

A. Well, is that Commissioner Casey's statement?

Q. In effect; I have paraphrased it.

MR. MATTHEWS: No, I object. He should be confronted with the testimony.

Q. Well, here is the testimony, I merely paraphrased it. "They told me that they"—that is, it refers to the city commission—the Commissioner says that the City Commissioner told me "that they would allow peaceful picketing by the American Federation of Labor, bona fide picketing, with no busybodies interfering, and told them" the Com-

mission, "that they would not recognize the Communist unions."

"Who said this, Commissioner?

"THE WITNESS: It was said by Mayor Hague."

That is the reason that I paraphrased it, just to save the time.

A. Do you recall who appeared before us on that occasion?

Q. I don't think that appears in the testimony.

MR. ERNST: Yes, it does.

MR. FRAZER: Pages 396 and 7.

Q. The full testimony shows this. This was an examination of Commissioner Casey——

MR. HERSHENSTEIN: Was this taken in the case before Judge Clark?

MR. FRAZER: In the case before Judge Clark.

Q. Examination of Director Casey by Mr. Glavin of the Jersey City Law Department. Starting here, Commissioner Casey's examination, he says:

"With the Seamen's we didn't allow them to picket.

"Why not?

"It wasn't a bona fide union. It wasn't a bona fide strike.

"Was there any other reason?

"That's all.

"And you have had trouble with this said union, the Furniture Workers Union, before, haven't you?

"We did.

"And the same people were involved in it, Mr. Perlow and the other men, who testified here as officials of that union?

"There were.

"Now, has the City Commission of Jersey City in any way, or has it ever in any way opposed the American Federation?

"They have not.

"To your knowledge did the American Federation of Labor appear before the City Commission of Jersey City while you were a member of that Commission—that is the only thing that I have to identify the man because I got it from Commissioner Casey's examination——

"I don't get that question," he says, and Judge Glavin repeats: "Did the representatives of the American Federation of Labor appear before the City Commission of Jersey City while you were one of the Commissioners?

"They did.

"And what was the purpose of that?

"Picketing.

"Well, what happened, what was the attitude of the Commission?"

The Court interrupted and said: "How long ago?

"MR. GLAVIN: Only recently.

"Do you know when it was, Commissioner?

"Some time in January I think was the date, I am not sure, but I was at the Commission meeting.

"Yes. What was the result, what determination did the City Commission come to?"

And then comes the part that I have read earlier. That is the best I can do by way of identification.

Do you remember that action?

A. I don't know. I don't remember it, Counsel, I don't recall. You see there is nothing shows there was any question or any discussion before the Commission. I cannot refresh my memory of some official action or some group that had presented themselves, I cannot identify that.

Q. Well, I thought from your reference to these unions who were appearing at your meetings that that would probably refresh your mind.

A. They don't appear once a year.

Q. No, at this particular time I understand you to say at all the Commission meetings there were unions coming in.

A. Oh, no.

Q. I misunderstood you.

A. They never come in.

Q. Now, you remember stating in your statement of December 27th of last year that the City Commissioners have entered into an extensive publicity campaign throughout the country under the direction of Mr. Raymond Greer, the city comptroller, inviting industries to locate here.

A. Yes, sir.

Q. And one of the inducements that you set forth in those advertisements is that Jersey City is free from labor difficulties, isn't it?

A. Yes, sir.

Q. Have any new industries located in Jersey City as a result of that advertisement?

A. The report I get from Mr. Greer, hundreds of them, that is, for a period of a couple of years, Counselor.

Q. Now, in view of those representations in your advertisements you would feel as mayor of the city that you should assure those new industries coming in freedom from labor difficulties, would you not?

A. No, we don't assure them anything. The first question that Mr. Greer, who is interviewing any one of them, he asks them where are they now located, "Have you now any labor trouble? Are you unionized? What is the character and type of your employees." He tells them that if they are having any labor disputes, if they are undesirable, he never allows them in, tells them he don't want them in there. There is one man here last week from New York in the fur business was having a strike—I see where it is settled—two weeks ago. He was a big concern, and Mr.

Greer says, "No, it is impossible for you to locate in Jersey City because you are having labor trouble and you will only invite it over here from New York and we don't want it."

Q. Didn't you have some runaway shops that came over from Brooklyn as a result of this invitation?

A. So they say, I don't remember, I don't recognize them.

Q. The Uneeda Slipper Company; do you recognize them?

A. I think that is the company has given us a lot of trouble. We try to discourage all those sweatshops, we don't allow it. I am utterly opposed to the sweatshop.

Q. The Uneeda Slipper Company is located in the Harborside Building.

A. You see that is a big building, Counselor; that has, I presume, I don't know how many hundred thousand feet of space—that was a failure, you see, it was turned over to the hands of a receiver, and then they opened it up to the various industries to come in and set aside a certain amount of space and hundreds of them got in there. It is one building. So it is difficult, it is very difficult to get in at them because they are on railroad property and we have no access other than going in around on this private railroad property to really get near the building.

Q. Well, there are officers in there all the time, aren't there, in the building patrolling it?

A. No, they are their own officers,

Q. Aren't there regular Jersey City police there?

A. No, only when we have trouble we send them in there; they have their own special police department. The Pennsylvania Railroad owns that property.

Q. I understand so.

A. And they police it.

Q. Now, the Uneeda Slipper Company is one of those in there?

A. From the paper accounts; I never had it officially brought to my notice.

Q. That is a sweatshop?

A. I don't know if it is; I would like to get it out.

Q. $6 or $8 a week for forty or forty-five hours is sweatshop.

A. They ought to be put in State's Prison for paying that salary. If I had my way I would put them in jail.

Q. Did you e er hear of the Oxford Slipper Company?

A. No.

Q. It is really the same type of concern, isn't it?

A. You see I don't get any official notice of these concerns, Counselor, only through the papers. If there is any little controversy I get more information from the papers than I do officially from my colleagues.

Q. Well, now, would you permit the efforts of organizers in the Harborside Building in those shops that come over under the invitation of——

A. Well, they haven't come over under the invitation, because in the first place if they ever made known to us that they were sweatshops—we even went down there, we sent the health department down there to try to wipe them out; we sent even Mr. Green, he contacted the heads there and told him that this element of business is undesirable to Jersey City and we wish he would discontinue it, we don't want them there.

Q. Of course, your recognize the right of the employees to organize, don't you?

A. Oh, yes, yes.

Q. And is that true of these Harborside people?

A. Well, of course, you have got to explain, counsel, what you mean by organize; do you mean organize with a big bale stick or a blackjack or an ax or something?

Q. No, that wasn't my concept.

A. Well there are two methods of organizing, some organize by using force and endeavor to destroy the life of people. Now, that is one method. Now, there is another way, a peaceful way, but they all seem to want to resort to the rough way that we don't tolerate.

Q. Now, have you any examples of those rough ways or organizing recently?

A. Plenty of it.

Q. Recently?

A. Not recently, but we have had plenty of it.

Q. Have you since November 29, 1937, had examples of rough ways of organizing?

A. 1927?

Q. 1937.

A. '37, no. But, Counselor, I would like to get this over to you: During the controversy of the sweatshops I wrote the American Federation of Labor a letter and I said to the president of the American Federation of Labor that my attention has been called to the condition that exists in various sections and that there had been charges made that sweatshops has been forcing their way into Jersey City and I asked him would he get his lawyer together with the law department and whereby we could prepare an ordinance that would wipe out sweatshops in Jersey City. Now, that is a year old. Up to date they have never complied with the request, I presume, whether or not it could be legally done I do not know, but I wanted to at least make an effort.

Q. Well, now, wouldn't one of the best ways of getting rid of sweatshops be to allow labor leaders to organize and give them protection while they were doing that?

A. But who is the leaders? Why don't they do it with the local groups, why do they come from Brooklyn and New York, why don't they let the American Federation of Labor in Jersey City do it? Nobody ever stops them from doing these things but they come over from out of town and they come over and resort to all sorts of threats and all sorts of threatening of life. Why, they even beat up a lot of men who lived in Brooklyn because they moved over here with this concern.

Q. Do you remember in your statement of December 27th that you said of the CIO first that the plan was first to enter Jersey City for the purpose of distributing literature in all of the industries here, and in the business houses; do you remember saying that?

A. Yes.

Q. Now, I think it is conceded now that that wasn't unlawful, isn't it?

A. You see, Counselor, you must understand that the example that we have witnessed in the City of New York and all the big cities, those tactics in Jersey City would spell destruction to us, so we cannot tolerate that type of mass picketing. Just because a man happens to have a place of business and hasn't unionized it they immediately form ten or fifteen or twenty delegates and start to brow beat them.

Q. Mr. Mayor, I haven't said anything about mass picketing. I am asking whether you didn't say this about the distributing.

A. I am showing just what they are going to do if I permitted this distribution of circulars. Now, their methods of coming in to organize is not peaceful. How are they going to organize without molesting and attempting to violate the law in our City?

Q. How do you know they are going to do that if you don't give them a chance?

MR. MATTHEWS: He has already testified that Carney threatened it, your Honor.

MR. FRAZER: No, they didn't; they said they read in the press, that Mr. Carney said he was coming in with two thousand strong, and the same article said Mr. Carney said he was coming in peacefully.

MR. MATTHEWS: Here is the *Newark News* with the headline saying "CIO preparing for invasion." The *Newark News* certainly wouldn't have a headline that is false, would it? You wouldn't think that was false?

MR. FRAZER: I would think it was quite possible.

MR. MATTHEWS: That's coming.

Q. You said they wouldn't allow a May day parade. They have them in New York and most of the big cities, don't they?

A. They have. They had them this last few years in New York.

Q. Have any trouble with them, do they?

A. Oh, plenty of trouble.

Q. Do they?

A. I think it is a disgrace, myself.

Q. Do you allow Labor Day parades in Jersey City?

A. Sure.

Q. You do very often?

A. Yes, I think that's great.

Q. Now, what is the difference between a May Day parade and a Labor Day parade?

A. Well, everybody in a May Day parade carries a Russian flag.

Q. It is the color of the flag?

A. Yes, and everybody in a Labor Day parade carries an American flag. There is a vast difference between the two groups.

Q. Now, you do remember that some time ago there was a situation which developed in the State of Oregon, where that state attempted to prohibit meetings of communists? Do you remember that?

A. Is that the——

Q. The so-called De Jonge case; De Jonge v. Oregon.

A. That the present governor is involved in? That was defeated——

MR. MATTHEWS: I didn't get the Mayor's question.

A. That's right.

Q. No, I don't think so.

MR. FRAZER: I asked him——.

A. (Continuing.) Is that the case that the United States Supreme Court——

Q. Yes, yes, the Oregon case; De Jonge v. Oregon.

A. Where the man——

MR. HERSHENSTEIN: Not the Griffin case?

MR. FRAZER: No.

A. (Continuing.) Where the man was sent to State's prison for being a member of the communist party?

Q. Yes.

A. (No answer.)

THE COURT: There it is, Mr. Frazer (indicating).

Q. Do you remember what Chief Justice Hughes said in that regard?

A. No.

Q. "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence"—and that's what you are trying to prevent?

A. (The witness nodded.)

Q. "—the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion to the end that the government may be responsive to the will of the people and that change, if desired, may be obtained by peaceful means. Therein lies the security of the republic, the very foundation of constitutional government."

Now, you wouldn't say Chief Justice Hughes was a Red, would you?

A. A Red?

MR. MATTHEWS: I object, if your Honor pleases.

MR. FRAZER: Well, he is speaking of civil rights.

A. Yes, but you don't go far enough.

Q. Well, I will go a little further.

A. Well, all right, no, but let us recite what led up to that. They passed an act in the legislature making it punishable for twenty years in State's Prison for any man who joins the Communist Party. Is that right?

Q. Yes.

A. Well do you wonder that Justice Hughes was disturbed over an act of that character?

Q. And prohibiting the holding of any meetings.

A. Yes, but——

Q. Of that kind.

A. But he censured that man for becoming a member of the Communist Party—they found him guilty and sentenced him to twenty years.

Q. Have you got the text there? The act there, which was under review, related to some so-called criminal syndicalism, which is defined to be "the doctrine which advocates crime, physical violence, sabotage or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution."

Now, that pretty well expresses your view, doesn't it?

A. No, no.

Q. I mean when you say riots and bloodshed and murder.

A. What's the penalty of that?

Q. Well, let's go on.

A. What are you trying to hook me up with--twenty year sentence of a man?

Q. Then there is a paragraph which defines sabotage. Then it goes on and says: "Any person who, by word of mouth or writing, advocates or teaches the doctrine of criminal syndicalism or sabotage, or who prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any books, pamphlets, paper, handbill, poster, document or written or printed matter in any form whatsoever, containing matter advocating criminal syndicalism, or sabotage, or who shall organize or help to organize, or solicit or accept any person to become a member of any society or assemblage of persons which teaches or advocates the doctrine of criminal syndicalism, or sabotage, or any person who shall orally or by writing or by printed matter call together or who shall distribute or circulate written or printed matter calling together or who shall preside at or conduct or assist in conducting any assemblage of persons, or any organization, or any society, or any group which teaches or advocates the doctrine of criminal syndi-

calism or sabotage is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years, or by a fine of not more than $1000, or by both such imprisonment and fine."

Now,——

A. He got ten years.

Q. All right. For doing what?

A. I don't know. You had better find that out. I don't know.

Q. I thought you did.

A. No.

Q. For making a speech, was it, or advocating——

MR. MATTHEWS: Give him the section of the statute he was convicted under.

A. I am not a lawyer, I don't know. I don't follow those things.

Q. Well, I know you don't. I am not trying to confuse you there. You said some time ago that the Reds advocated those very things, didn't you?

A. Yes, sir.

Q. And that you believe that in Jersey City those rights were now suppressed?

A. Yes, you see what prompted that act, Counselor, if you will go back further, of all the bomb throwings and all the murders—not in that act; I am not talking of that act, but the conditions in that country back there—that's where the I. W. W. was born; that's where all this violence and all this disorder and murders has developed from; that's where it was all born, back in that country; and I presume the man who prepared that act occupied the same type of position you have always occupied in this part of the country, a real, true American. Now, if I was going to have an act drawn, I would go to you for that type of an act.

Q. I am recognized as a good, legislative draftsman.

A. That's all right, no, no.

Q. Now, going on with the opinion here, if this is more convenient——

A. I don't mean that to offend you.

Q. Not in the least.

A. I respect your ability and your life.

Q. "The question, if the rights of free speech," said Chief Justice Hughes, "and the peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

"We are not called upon to review the findings of the State Court as to the objectives of the Communist Party. Notwithstanding those objectives, the defendant still enjoyed his persoal right of free speech and to take part in a peaceable assembly having a lawful purpose, although called by that Party. The defendant was none the less entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances. That was of the essence of his guaranteed personal liberty."

Now, may I ask this question: Suppose I should ask a permit at which Mr.—well, your favorites, Mr. Roger N. Baldwin and Mr. Morris Ernst, were to speak in Jersey City, open air, on the subject of collective bargaining for labor, and their right to earn a decent livelihood and to acquire security, would such a permit be granted?

A. If that application was made prior to this trouble there would have been no objection to that application.

Q. Under present conditions?

A. Under the present condition we could not trust them to believe that they were sincere in that type of talk, that they were scheduled to make. We would feel it was just a camouflage, that they were endeavoring to get in under that camouflage; because of their past record it would be impossible for us to trust them. Naturally, we would deny it, under the present conditions, Counselor. Prior to that, no. Nobody was denied that right. And let me add to it, Counselor, that Chief Justice Hughes' remarks in that Oregon case has existed in Jersey City since I have been the head of the government, for twenty-five years. His remarks exactly has been our attitude for twenty-five years. We objected to nobody. We denied nobody the right to talk.

Q. I understand that.

A. I must impress upon everybody that's interested in this case that this only started when this uprising started.

Q. Well, let me read this.

A. That was because of the condition of the people and the condition that has been brought about by these attacks and utterances that has aroused the people.

Q. "There are those who fail to read both the signs of the times and American history. They would try to refuse the worker any effective power to bargain collectively, to earn a decent livelihood, and to acquire security. It is those short-sighted ones, not labor, who threaten this country with that class dissention which in other countries has led to dictatorship and the establishment of fear and hatred as the dominant emotion in human life."

A. Who says that?

Q. President Roosevelt in his Labor Day radio address, September 7, 1936.

Now, if you were correctly quoted in the *Times* of April the first of this year, in relation to the Griffin case—when you were in Florida, I think.

A. (The witness nodded.)

Q. You say "my policy toward the invasion of business or industry by outside groups is unchanged. It must be clearly understood that the fact that the distribution of circulars and other literature is permitted must not be interpreted as permission to molest, threaten, or coerce the working people or to invade or interfere with private property."

A. (The witness nodded.)

Q. "Such conduct will be dealt with not as a violation of a city ordinance, but under the state laws prohibiting disorderly conduct and unlawful assemblage, which impose far more severe penalties than were provided by the city ordinance. My policy and that of the city administration to protect labor, business and industry, in Jersey City, against invasion or molestation remains as it always has been since I have been Mayor."

Does that mean that the decision in the Griffin case makes no difference in the attitude of the Jersey City authorities?

A. Oh, no, it makes a vast difference.

MR. MATTHEWS: His statement precludes that, if your Honor please.

A. Oh, no, it makes a vast difference.

Q. Now, you do not, as I read your statement, intend to makes charges for the violation of the ordinance, but to make charges for disorderly conduct and unlawful assemblage?

A. I was desirous, Counselor, in that statement to call to the attention of this group that I anticipated trouble from, that was endeavoring to take over these industries and business of our city, that even though Justice Hughes had rendered this decision, that was making it possible for the distribution of circulars, that they should not go too far in their efforts to attempt to embarrass or to do anything that would lead to any illegal act, in their efforts to distribute their circulars at our industries or places of

business. I wanted to let them know that we were determined that that would not be tolerated in Jersey City. While they may distribute their circulars, that they must do it in an orderly manner, and mustn't attempt to scare or browbeat any of the employees.

Q. Well, do you remember what you said in January, 1937, about the De Jonge case, as you were quoted at least as saying, in the New York *Times*, of January 6, 1937:

"There is a difficult situation here. We have not arrested Communists for holding meetings. We won't allow them to hold meetings."

Was that true?

A. Well——

MR. MATTHEWS: Are you correctly quoted, he wants to know?

A. What?

MR. MATTHEWS: Are you correctly quoted?

A. I don't think so. I can't get this. Is that Zerner?

Q. I don't know. It is the New York *Times*.

A. If it is Zerner, it is out with me.

Q. Well——

A. Because he has done nothing but misquote me ever since that man——

Q. Well, just let me give you the whole——

A. (Continuing.) —has come into the Red atmosphere.

Q. Let me give you the whole of it, Mayor. "We won't allow them to hold meetings. Any group of citizens has the right to peaceful assemblage but the Communists will not meet peacefully for peaceful purposes." That sounds like you, does it?

A. That's true.

Q. "To do that would be a violation of their code."

A. True.

Q. "Their policy is to incite disorder and encourage violence, to assail government, God and the church, to in-

ject themselves into labor disputes and breed revolution." That is true?

A. That is the real, correct interpretation of a Communist.

Q. Well, this may be Zerner but he is doing a good job.

MR. MATTHEWS: Well, apparently there he had a lapse.

A. (Continuing.) But wait till you get to the bottom and you will find a twist in it.

Q. No, I think this sounds pretty typical.

MR. MATTHEWS: Watch your step on that assurance from counsel, Mayor.

Q. "Revolution is their creed. We in Jersey City are God-loving, law-abiding, peace-deserving Americans, and there is no place in our community for Communists or the things Communists stand for." That sounds right?

A. I have been preaching that ever since I have been in public office, so that surely must be me.

Q. Now, Mr. Mayor, I want to call your attention to another case. This is State v. Butterworth and you remember the facts in that case, there was denial of a permit in Paterson and certain persons, including your friend, Mr. Roger N. Baldwin——

MR. MATTHEWS: I object, his friend.

Q. Well, I withdraw the word. I think the Mayor understood it was facetious.

A. Paterson was a bad place for Roger, too, he got six months there.

Q. I want to call your attention, I notice in a number of your statements that you say Mr. Roger N. Baldwin, noted Communist, was given six months in prison for his actions in Paterson but you have never said that the Court of Appeals——

A. Reversed it.

Q. —reversed it.

A. No.

Q. Was that a mere oversight?

A. Let him say it; he got the six months nevertheless.

Q. He got the six months but he got it unlawfully.

A. He deserved it. No, it wasn't unlawful, because there was a technical error, and the Court of Appeals ruled that it was a technical error.

Q. I want to read just a short piece from Justice Kalisch: "The right of people to meet in public places to discuss in an open and public manner all questions affecting their substantial welfare and to voice their grievances, to protest against oppression, economic or otherwise, and to petition for the amelioration of their condition and to discuss ways and means of attaining that end were rights confirmed and guaranteed them by the Magna Charta, the Petition of Rights and Bill of Rights, the mainstay of the British Constitution and the bases of both our Federal and State constitutions."

MR. MATTHEWS: I object, your Honor, that is not the essence of that reversal. That is just the Judge in a little patriotic aside in his opinion.

A. If you will go over the Gummere opinion you will find Sam Kalisch and Jim Minturn, they voted, they opposed it, too; they were classified in that court as being just a little bit over the line, too liberal.

Q. The reversal, however, was unanimous including Chancellor Walker, Justices Trenchard, Parker, Minturn, Kalisch, Katzenbach, Campbell, the present Chancellor.

A. Pretty good court.

Q. Yes. Now, we get to the lay judges, Van Buskirk——

MR. MATTHEWS: He is dead.

Q. (Continuing.) —Case, Hetfield and Dear.

A. Wonderful.

Q. I mean you couldn't kick about those.

A. No, but you don't say that the Communist Party contributed $25,000 to that affair in Paterson led by Nor-

man Thomas, not Norman Thomas, Roger Baldwin; Roger was well paid for his trouble.

Q. But the Court of Errors and Appeals did hold that Mr. Baldwin had a right to speak in Paterson.

MR. MATTHEWS: I object.

A. It wasn't to speak, it was a parade.

MR. MATTHEWS: Just a minute, Mr. Mayor. That opinion should be read to the Court, why it was reversed. The Court of Errors and Appeals just recited, as every judge will in an opinion, what are the fundamental rights of a citizen, but Mr. Baldwin did not slip from the noose on that account.

Q. Mr. Baldwin was convicted of unlawful assembly, wasn't he, in that case that you refer to?

A. I think it was. He was out there leading the troops, he done a pretty fair job, probably ten million dollars' worth of damage.

Q. They had two thousand people there, something like that.

A. Oh, that strike took place for six or seven months. Roger was very prominent out there, same way in Jersey City if we would allow him.

Q. Well, now, do you think on the occasion of November 29, 1937, that the action of those men who were arrested for unlawful assemblage was of such character as to reasonably create in the minds of firm and courageous persons a well-founded fear of threatening danger to the public peace, with all your police out there and forty to two hundred persons?

A. Of course, you must understand, Counselor, that declaration by the head of that union, Regional Director Carney, he had stated that they were to invade our city by three thousand strong; naturally the police was disturbed and anticipated trouble, and of course when they confront those men they notified them that this ordinance was on

the statute books and that it was in violation of the law and that they must understand now that their assemblage here is unlawful, they are on an unlawful purpose, that's the statute, and they said, "We can proceed against you for an unlawful assemblage, we now inform you that you are about to commit and violate a law. Do you still insist that you are going to violate the law?" They says, "We don't give a damn about any law, we are going to do it." Now, I think that going before a proper jury that type of testimony and that type of evidence I doubt whether or not that five or six men that has been held, they would have a hot time getting out.

MR. MATTHEWS: Or before a judge.

A. (Continuing.) Because they came there for the sole purpose of violating a law; they violated the law of illegal assemblage. They came there after being instructed by a deputy chief of police that "You are now here assembled in violation of law. You are about to violate a law; if there is any disorder, if there is any violence, you are going to be held responsible for it. You are the men is going to be responsible for this violence." They were careful on warning them, confronted them with everything appertaining to the law, and with their eyes open they says, "Law or no law we are going to follow Carney's orders." Now, I think that is a serious violation.

Q. Wasn't the attitude in Paterson much more threatening than the attitude in Jersey City on the 29th of November?

A. Well, the attitude in Paterson, the mob apparently got way out of control, and Roger Baldwin was leading a lawless mob, a mob that apparently were willing to do anything to gain their point. Now, why should he go out there and——

Q. I don't know why.

A. But he appeared there.

Q. Our Court of Errors and Appeals said he had a right to.

MR. MATTHEWS: I object, your Honor please, that is not that decision, Mayor.

A. Oh, no.

MR. MATTHEWS: That is not the decision.

A. Oh, no, he did not have a right to.

MR. FRAZER: What is your interpretation of the decision?

MR. MATTHEWS: Are you asking me, Dean?

MR. FRAZER: Yes.

MR. MATTHEWS: I will give it to you in law school, that's where you should have learned it.

MR. FRAZER: Thank you.

MR. MATTHEWS: Welcome.

THE COURT: Ten-thirty in the morning.

(At this point an adjournment was taken to Wednesday, June 15, 1938, at 10:30 A. M.)

Wednesday, June 15, 1938.

Case continued.

Appearances as before.

THE COURT: Are you ready, Mr. Matthews:

MR. MATTHEWS: Yes, your Honor.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Mr. Mayor, when these first applications in December, 1937, were made for permits, about that time, on Decem-

ber 20, 1937, Mr. Hamill wrote a letter to Mr. William J. Carney. Were you cognizant of that fact? I will show you the letter.

A. Yes, I recall that.

Q. That was written with your knowledge?

A. Yes, we had a conference.

Q. And I answered it on December 23d.

A. (No answer.)

MR. FRAZER: Have you that letter, Mr. Matthews?

MR. MATTHEWS: I don't know, Spaulding. Have we that letter?

MR. FRAZER: Or shall I use the copy?

MR. HAMILL: What letter is that?

MR. MATTHEWS: The answer of Mr. Frazer on December 23d.

MR. FRAZER: I have a copy here, if you are willing to have that used.

MR. MATTHEWS: Of course, I have never seen it.

MR. HAMILL: Was that attached to the bill of complaint?

MR. FRAZER: No, that was not attached. I have here a copy.

MR. MATTHEWS: That's all right; the copy may be used.

MR. HAMILL: Then you have my answer to you?

MR. FRAZER: Yes.

MR. HAMILL: On this letter.

MR. FRAZER: I have.

It doesn't make any difference whether the original is used, or the copy, does it?

MR. MATTHEWS: So long as you say it is a copy, all right.

MR. FRAZER: I have attached it to Mr. Hamill's reply to my answer.

Q. You were familiar with that whole correspondence, were you not, Mayor?

A. Yes, sir.

MR. FRAZER: I would like to offer it.

MR. MATTHEWS: May I see it, please?

MR. FRAZER: Surely.

MR. MATTHEWS: And it will take me a moment to look it through, with your Honor's permission.

MR. MATTHEWS: If your Honor please, I have no objection with this understanding that this correspondence between Mr. Hamill and Mr. Frazer seems to be two lawyers' interpretation of what the constitutional provisions are of statutes and ordinances.

THE COURT: I thought it was in evidence.

MR. FRAZER: No, sir.

MR. MATTHEWS: No, your Honor.

MR. HAMILL: My letter is in evidence but Mr. Frazer's letter in reply to mine and my second letter in reply to his have not been attached to the bill and have not been put in evidence.

THE COURT: I think they should be anyway.

MR. MATTHEWS: Yes. And I just want to call the Court's attention to the fact that in Mr. Frazer's letter he says Mr. Frazer is appreciative of Mr. Hamill's high sense of fair play in warning him of the New Jersey law concerning unlawful assembly. That part is very pleasing but I think in admitting the correspondence we do so with the understanding that it is simply the interpretation of my former dean and Mr. Hamill as to what ordinances and statutes mean. No objection.

MR. FRAZER: Well, that is your construction you are placing on it, Mr. Matthews; I am not limiting my offer to——

MR. HAMILL: For what purpose, Dean?

MR. FRAZER: —any such purpose.

MR. HAMILL: We object unless we know for what purpose the offer is made.

THE COURT: I suppose the ultimate interpretation of statutes and ordinances is for me and my superiors.

MR. MATTHEWS: There is no contretemps between us; we do not object.

(Received and marked Exhibit P-36.)

Q. I call your attention to the statement in this letter:

"I further call your attention to the law regarding unlawful assembly. It has been held in this state that where it is the common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, have a natural tendency to inspire rational, firm and courageous persons in the neighborhood with well-grounded fear of serious breaches of the public peace, the crime of unlawful assembly is committed."

This letter was based upon newspaper articles which stated that representatives of the CIO intended to exhibit pamphlets and papers in Jersey City.

That's right, isn't it?

MR. MATTHEWS: Which letter please, Spaulding?

MR. FRAZER: Mr. Hamill's letter.

MR. MATTHEWS: Well, now, how would Mayor Hague know that?

MR. FRAZER: Because the letter says so.

MR. MATTHEWS: Well, if the letter says so, then will you confront him with the reading, so that——

MR. FRAZER: I showed him the letter. I will read the first sentence of the lett.

MR. MATTHEWS: Please, Spaulding.

Q. "The newspapers contain articles in which you are quoted as saying that you intend to distribute pamphlets and papers in Jersey City with or without the consent of the municipal authorities."

MR. MATTHEWS: That's the point I wanted; with or without the consent of the municipal authorities.

MR. FRAZER: Yes, with or without.

Q. Now, Mr. Mayor, that was the basis of this correspondence, was it not?

A. Yes, sir.

Q. Do you consider the distributing with or without the consent of the municipal authorities a basis for a charge of unlawful assembly?

MR. MATTHEWS: I object to that, if your Honor please, because Mr. Hamill has just brought to my attention the second sentence which says:

"You are further quoted in the press as saying that you intend to organize and hold a public meeting or public meetings in Jersey City with or without consent or permit from the administration."

Now that might well form the mayor's idea of what would be lawful or unlawful.

MR. FRAZER: I am asking him first whether he considers the first statement as a basis for a charge of unlawful assembly.

A. As to the distribution of pamphlets?

Q. Yes.

A. Well, of course, naturally, if they are to assemble and they are to march into Jersey City, with that idea in mind——

Q. Now, Mr. Mayor, may I interrupt you just a moment? There is nothing said about marching in. The papers say they are coming for the purpose of distributing circulars with or without the consent of the municipal authorities.

MR. MATTHEWS: But the newspapers had said that they were going to march in; that is what the mayor says.

MR. FRAZER: That is not what is stated in this letter.

MR. MATTHEWS: But he says that the newspapers contain articles. He couldn't quote the articles very handily.

MR. FRAZER: I have asked the mayor, may it please the Court, whether the basis of this letter is the fact that the newspapers are quoting that the CIO intends to distribute pamphlets in Jersey City. That is what the letter says. I am asking the mayor whether he considers that the basis of the charge of unlawful assembly.

A. Well, now——

Q. Can't you answer that yes or no, sir?

A. Well, now, wait a moment. Not yes or no.

MR. FRAZER: Might I ask for a yes or no answer?

MR. MATTHEWS: No, I object. How can he answer yes or no? It only takes one-half of the statement of the lawyer.

MR. FRAZER: I am confining my examination to that one-half for a moment; I am [not] trying to mislead the mayor in any way.

THE COURT: You may answer.

MR. MATTHEWS: I think the Mayor ought to know the question.

THE WITNESS: Well, it is a question that can't be answered yes or no.

THE COURT: You may answer it.

MR. MATTHEWS: The Court says you may answer it the way you can.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

A. Why, the distribution of circulars, Counselor, only leads up to, just as the paper stated, that they were coming in to assemble, coming in to meet, coming in to distribute pamphlets, which only would lead to disorder and which only would lead to probably the police being injected into the question to make arrests, and naturally the counsel on our advice was to inform this man that if he did carry out his plans that it would be unlawful and that he had to realize that he was violating not alone a local ordinance but a state statute.

Q. Now, will you answer my question?

MR. MATTHEWS: I think he has, your Honor please.

A. Your question is about the distribution.

Q. Whether you considered the coming in of a group, even of a group, for the purpose of distributing circulars a fair basis of a claim that the law against unlawful assembly is being violated.

MR. MATTHEWS: I object, your Honor; there is no such statement in that letter. He puts two special sentences in the first paragraph and says in the second. assuming you have been correctly quoted—now, this letter does not say that the Mayor considers distributing pamphlets, it adds "with or without a permit."

It adds, "You are further quoted as saying you intend to assemble and hold a public meeting with or without a permit."

MR. FRAZER: I call the Court's attention to the fact on November 29, 1937, a group of men came into Jersey City and distributed circulars and were arrested for unlawful assembly. I want to know whether the Mayor still considers that as a basis for a letter written on December 20th as violation of the law against unlawful assembly.

MR. MATTHEWS: That isn't what the letter says.

MR. FRAZER: I am asking his opinion.

MR. MATTHEWS: I object as irrelevant. If he is being examined on the letter he should be asked about the letter.

MR. FRAZER: He is not being examined on the letter, he is being examined as to his belief, as the Mayor of the City of Jersey City. The letter is a mere indication of what his attitude might be. I am trying to find out if that is his attitude or not.

MR. MATTHEWS: He says that since the Griffin decision in Jersey City they have not stopped them from distributing pamphlets. I understand that was March, 1938.

THE COURT: Yes.

MR. MATTHEWS: Here is a letter, December 20th, in which the corporation counsel writes to Carney and gives him the story that appears in the paper and warns him, as I take the letter, that any violation of that letter comes under two statutes or one statute and one ordinance, as I read the letter.

THE COURT: Exactly what do you want to know, Dean Frazer? I am a little puzzled myself.

MR. FRAZER: I want to call the Mayor's attention to the fact that certain things which the courts have held to be innocent in themselves have been made the basis of a threat by the city government of Jersey City against those who propose to exercise those rights.

MR. MATTHEWS: I object, if the Court please.

THE COURT: Such as what things?

MR. FRAZER: The distribution of circulars, the holding of public meetings.

THE COURT: Well, will you divide the two things? I understood that Jersey City admitted error in view of the Supreme Court decision.

MR. MATTHEWS: Not error, but Jersey City said that since the Supreme Court had so decided it would consider the Supreme Court had interpreted it in that fashion, and as good citizens would follow the law. The Supreme Court declared the Minimum Wage Law unconstitutional but later it said itself it was in error. Now, the error we don't want to put on Jersey City any more than on the Supreme Court.

THE COURT: Well, I use "error" in the legal sense.

MR. MATTHEWS: Yes, your Honor please.

THE COURT: Now, about unlawful assembly; will you frame that question alone.

Q. Do you consider it an unlawful assembly for persons to come into Jersey City for the purpose of distributing circulars, whether singly or in groups, and whether with or without the permission and consent of the municipal authorities?

MR. MATTHEWS: Now, if your Honor pleases, he has already answered that.

Q. That is capable of a yes or no answer.

MR. MATTHEWS: He has already answered that question by saying that it depends on the circumstances in the case. We went all over that, Spaulding.

MR. FRAZER: May I ask that counsel not interrupt and continue to prompt the witness.

MR. MATTHEWS: I am not——

THE WITNESS: I think, Counselor, that I should answer that.

MR. MATTHEWS: All right, Mayor; go ahead.

A. The Counselor's question is, referring to this letter that was forwarded to Mr. Carney by the corporation counsel, after conferences of the Director of Public Safety and myself and several other members of the law department and members of the City Commission. The Counselor does not lay the groundwork and show which led up to the appearances of this group of people coming into Jersey City. This was prior—this was after, rather—the statement of Mr. Carney that he was going to invade Jersey City three thousand strong.

Q. That statement, according to you, was made some month before?

A. No, no, no; no.

Q. This is December 30th.

A. Well, when was the statement of Mr. Carney?

Q. Somewhere about November 25, 23.

MR. MATTHEWS: 23d.

Q. The statement which you claim to have been made, which I don't admit having been made, but the one which you referred to as having appeared in the press came before November 29th.

A. You will find that that letter, Counselor, was the result of a statement of Mr. Carney, returning back to Jersey City. Now, naturally, I don't think it is a serious violation, as I stated earlier in my testimony, for a man to be

apprehended or stopped for the distribution of circulars. Certainly not. That's a minor—I don't consider a group of men attempting to talk on a public street without a permit as a serious breach of the law. That's a minor, but it depends on circumstances surrounding both of those violations. If that's a threat to the government, to the very foundation of government, then it is serious. If it is a minor distribution or violation, it is not serious.

Q. The intent of that letter, Mr. Mayor, which was written after a conference of the Commission, was to threaten—

A. No, no.

Q. (Continuing.) —the CIO—may I complete my question?

MR. MATTHEWS: I object, if your Honor please.

MR. FRAZER: May I complete my question, please?

Q. (Continuing.) —was to threaten the representatives of the CIO if they continued to come in.

MR. MATTHEWS: I object.

Q. (Continuing.) To hold public meetings or to distribute circulars there would be criminal or penal prosecutions of one kind or another taken against them, would there not?

A. You wouldn't consider it a threat for a duly authorized public official that's cloaked with the authority to advise the legal bodies as to their duties to notify any group that's endeavoring or about to violate a law, call their attention to the fact that they are about to violate a law, and describe just exactly what the penalties are. I don't think that's a threat. I think that's doing them a kindness.

Q. Now, I call your attention to the fact that in my reply I stated this:

> "I have every desire, however, to avoid all conflict between my clients and the police authorities of Jersey City, and I am wondering whether there is not some common ground in this field of law upon which we may meet."

MR. MATTHEWS: Now, did he see the reply? That is the next thing.

THE WITNESS: I beg your pardon?

MR. FRAZER: Do you think I am reading falsely, Mr. Matthews?

MR. MATTHEWS: No, no; I say did he see this reply. It is directed to Jim Hamill.

MR. FRAZER: He said the whole matter was the subject of conference.

MR. MATTHEWS: No, he said——

A. Of course, Counselor, you were calm, and you in the preparation of that letter—naturally you could say about all these minor, small violations, do I think this and do I think that; but you are covering up all the other approaches to the whole question. You don't start from the beginning.

Q. No, Mr. Mayor, I am not covering up anything.

A. No, no, I don't charge you with that; but I say your letter comes so far behind all this disorder and all this threat and all these newspaper headings, and streamliners, about the invasion and about the dangers of life and property and disorder.

Q. Well, now——

A. You see, your letter is written at a time when everything is apparently peaceful.

Q. Yes, it was peaceful, wasn't it?

A. At that time.

Q. Yes. And then Mr. Hamill writes a letter saying that if anybody tries to come in and distribute circulars, or to hold a public meeting, with or without permit, that there will be certain consequences of the law upon those persons. I say that's a threat; don't you think it is?

A. No, no. Is that your letter—does your letter come after Mr. Hamill's?

Q. Yes, immediately afterwards. His was on December 20th, received I presume by Mr. Carney on December 21st, and coming into my hands about the 23d.

A. Well, in fairness to the Court, you ought to show us what led up to Mr. Hamill's letter.

Q. Why, I assume that Mr. Hamill's statement in his leter shows what led up to it.

A. Well, I would like to see Mr. Carney's statement. I would like to see just what led up to all this, the necessity of a letter of that character. I don't think it is a threat.

Q. Well, Mayor, I just thought—you said just a moment ago, you gave a picture of what led up to it, a newspaper account, did you not?

A. Well,——

Q. So that you knew what that was; you know it better than I do.

A. It wasn't one statement by Mr. Carney. It was numerous statements.

Q. You say there were numerous statements?

A. Oh, yes.

Q. And as a result of that, Mr. Hamill wrote a letter in which he said that if any of these actions are done in Jersey City, the persons who commit them may consider themselves as subject to some kind of penal or criminal action; that's right, isn't it?

A. Yes.

Q. Now in reply to that I wrote a letter in which I make, as Mr. Matthews has said, a statement of my viewpoint of the law, in which I disagree with Mr. Hamill. Then I add those words:

> "I have every desire, however, to avoid all conflicts between my clients and the police authorities of Jersey City, and I am wondering whether there is not some common ground in this field of law upon which we may meet."

That was a courteous question, was it not?

A. That letter, yes; that letter would be very appropriate, Counselor, if it was prior to the declaration and the threats of Mr. Carney; but after that—now you are asking us to go to work and conceive, after all this hurrah has been

created by the threats and by the invasion of these men, and you are saying is there no peaceful grounds that we can get together on. You see, the City comes into the picture then. The people have arrived into the picture. It is the people then we are dealing with, not with the individual commissioners or the counsel. You see, the people then started to move on this question and we had something else to contend with.

Q. Well, the people hadn't started to move on the 20th of December, had they?

A. Oh, the papers had——

Q. What caused them to move?

A. The papers and Mr. Carney's statement and the conditions which had taken place in every other city that the CIO had contact.

Q. And how were those movements of the people brought to your attention in December, or prior to December the 20th?

A. Why, by public expression and by people stopping me and writing me and calling me up and contacting with the police department and contacting with everybody in general.

Q. Prior to December 20, 1937, immediately, had the people been forming into some kind of activities?

A. Oh, I don't say immediately, Counsellor. Those things don't happen immediately. Those things take some little time.

Q. Well, Mr. Mayor, were there any——

A. At the time your letter arrived—you didn't get into the case, Counselor, until at least a month after this whole controversy took place.

Q. You are now referring to November 29th?

A. Yes, December 1st.

Q. I am now asking you what was the immediate cause of the communication of Mr. Hamill of December 20th, 1937, to Mr. Carney?

A. The immediate cause was that we—we must bring Mr. Carney and everybody to a realization as to the law

governing this question that they were endeavoring to take into their own hands.

Q. Well, now——

A. And we felt that naturally we should lay groundwork. We anticipated plenty of disorder, possibly bloodshed, and the Counselor there in his wisdom said we had better notify these people of just what the law is, and what is confronting them. Now, I don't consider that a threat, Counsellor.

Q. Just what was the activity of the people immediately preceding the writing of the letter of December 20th, which made the City Commission take action, through its corporation counsel, in addressing this letter to Mr. Carney?

A. Well, will you tell me the time that elapsed between Mr. Carney's invasion of Jersey City and this letter that you are discussing?

Q. If by the "invasion" you mean the affairs of November 29th——

A. I mean the beginning of it.

Q. That would be three weeks.

A. Well, there is justification, Counsellor, ample opportunity for the people to become acquainted with what's going on.

Q. Well, weren't the people satisfied for the time being by the arrests of November 29th?

A. Counselor, you probably overlook the fact that the papers of this country was carrying spreadheads all over the front pages about the disorder and about the violence in all these other cities. Now, the name CIO was a name that was considered a serious question in any city, and when they insisted that they were coming into Jersey City law or no law, they anticipated that the same conditions was going to develop in Jersey City that developed in Detroit, Michigan, Ohio, Pennsylvania and Illinois.

Q. But they didn't say they were coming in law or no law, did they, Mayor?

A. Yes, they did.

Q. They said they were coming in with or without a permit.

A. No, law or no law, Mr. Carney used the word.

Q. Not on December 20th.

A. No, I am talking of the beginning.

Q. I am speaking of the circumstances around December 20th. November 29th was a past episode; men had been apprehended and punished. I suppose after that there was quiet in the bosom of the citizens of Jersey City, was there not?

A. No. I say no because—no, there was quite a barrage from the Civil Liberties and Garfield Hays and everybody prior to you entering into this picture. Now, Counselor, that gave the people ample opportunity to make up their minds as to what the condition was surrounding these threats, as I would call it, from Carney, not a threat from Mr. Hamill.

Q. Well, now, going on with my letter I said I had every desire for a peaceful settlement and said, "I have advised the distribution of a pamphlet entitled 'The Wagner Labor Relations Act and Its Interpretation by the United States Supreme Court,' which will merely set forth the principal provisions of the statute and excerpts from the United States Court's opinion."

Do you think that that is a proper circular to be distributed among the people of Jersey City?

A. Your letter and that circular would have been very appropriate, Counselor, and if they had arrived prior to Mr. Carney making these declarations and threatening all sorts of violence and invasion, yes, that would have been appropriate, that and your letter would have been ideal at that time, but it had not arrived until three weeks after.

Q. Now, I recall that in certain instances the ordinance against distribution of pamphlets had been stated to be a perfectly legitimate police power ordinance because it prevented the littering of streets, that's right?

A. Yes.

Q. So I added this to show what our good intentions were: "Should you in your interpretation of the Jersey City ordinance deem it necessary, each distributor in Jersey City will be assigned two persons or a larger number if you prefer, whose task will be to pick up any of these pamphlets which may be dropped by the recipients on the sidewalks or streets."

That was a fair offer, too, wasn't it?

A. Well, no, I would say no because of the fact that the Supreme Court had sustained this ordinance and we had to abide by that ordinance.

Q. That is the littering ordinance?

A. Yes.

THE COURT: Did we get that decision that I asked for yesterday?

A. (Continuing.) You must remember, Counselor, that ordinance had been on our books for a long while.

MR. FRAZER: Just excuse me a minute, Mr. Mayor.

12 Miscellaneous, page 12.

THE COURT: Oh, is it here? Oh, I beg your pardon, I didn't know we had that.

Will you take this, Mrs. Bergen, so that I can have it in the record. Nelson v. McGovern, 12 N. J. Miscellaneous Reports, page 12. "Prosecutor had called at a private residence and delivered an unsolicited advertising circular to the occupants," quoting from the opinion.

Is there a question?

MR. FRAZER: No, I thought your Honor had not finished.

THE COURT: No, that's all. I just wanted to put it on the record so I would have it.

Q. Wasn't the offer to accompany each distributor with persons who would pick up any papers which were dropped a fair offer to prevent the littering of the streets?

A. Well, we had no——

Q. You can answer that. Was it a fair offer? Can't you, Mr. Mayor, without making an explanation?

A. Well, Counselor, Judge Clark had committed himself on this ordinance at the Garfield Hays hearing before him. He questioned Judge Glavin who said to Judge Clark that that ordinance does not permit the authorities even to permit anybody to violate this ordinance; therefore that it was a prohibition against the distribution of circulars in any form. Now, we felt that we have no right or no power to enter into an agreement with you, Counselor, to violate this because it was so binding and the courts had held it was so binding.

Q. As a littering ordinance.

A. Well, as everything, as we interpreted it, the distribution of circulars in any form.

Q. So that your position was, no matter what efforts were made on the part of the distributor, to prevent littering of the streets you would not have any power to permit a distribution?

A. No, we had no power whatsoever.

Q. But you have on many occasions permitted circulars to be delivered in Jersey City?

A. No, not with permission.

Q. Not with permission, but you have knowingly allowed circulars to be distributed?

A. No, I won't agree to that, Counselor. They distributed them, took a chance and got away with it; we didn't grant them permission.

Q. Weren't those patriotic rally cards distributed on the streets of Jersey City, Exhibit P-9?

MR. MATTHEWS: I think the testimony of the Mayor already on that is that they were.

A. Well, they may have been distributed, I don't know, Counselor.

Q. You don't know?

A. My understanding of that was they were put in the mail.

Q. These?

A. I think so, everything was mailed.

Q. Well, at that time for those rallies there were a series of postal cards gotten out, weren't there? That was mailed?

A. They wasn't distributed from the street, they were distributed to each address. They don't distribute those things on the street. We have so many of those types of cards during election time, during election period. Now, the man in charge of this district, he doesn't deliver those on the street, he goes from door to door and delivers them to the people by their name. That isn't prohibited any more than the United States mail is prohibited from being distributed personally.

Q. What is the Jersey City Police Department Safety League?

A. That is a group under Inspector Ciecuch.

Q. What do they do?

A. Oh, they do plenty; they assemble at various assemblies, for instance, you take the Henry Snyder Junior High, I have seen five thousand people, automobile drivers, present at one of their entertainments and lectures as to the safety of driving their cars, and as to instructions by moving pictures of accidents and things of that kind. I think they are very valuable to the community.

Q. I show you——

A. For safety.

Q. I show you a green card of the Jersey City Police Department Safety League, Unit No. 5, Snyder High School, and ask you whether those cards were not delivered on the street by police officers.

MR. MATTHEWS: Your Honor please——

A. No, they were never delivered.

MR. MATTHEWS: Casey testified they were delivered to the mail boxes.

A. Counselor, we don't let anybody be present at those safety meetings but automobile drivers. They couldn't deliver them on the streets, they are delivered to the owners of the cars and drivers who possess drivers' licenses, who we have a list of; policemen go from door to door in a great many instances of that to the name and who the driver is. What good would it be to invite the general public to those gatherings? We want the drivers.

Q. Very well, you have answered it. Now, in this letter you also, or Mr. Hamill also calls attention to their statement that they will come in for public meetings, and in my letter I made this statement: "The reason an open air meeting is contemplated is that as you well know, the owners of meeting halls in Jersey City have been so intimidated that they fear going against Mayor Hague's wishes will mean they will have to leave Jersey City. All I ask is that you face these facts realistically. If you, as his legal adviser in municipal affairs, will inform the Mayor that it is not lawful for him to intimidate owners of halls in Jersey City so that they will not hereafter refuse offers to pay for the use of their premises good currency which, but for the Mayor, they would be glad to earn, my clients will be happy to abandon their plan for an open air meeting and will hold all of their meetings indoors." Was that a fair offer of compromise?

MR. MATTHEWS: I object, if your Honor please.

Q. I ask for an answer.

MR. MATTHEWS: I object, if your Honor please. The testimony in this case and from the Mayor is that there was no intimidation and that letter was enough to incense any department and to show the Machiavellian first of those behind Spaulding, his clients, so that he didn't disagree with them when he wrote that letter but made baseless charges there. I don't think he wanted to make them himself, that is what his clients informed him. Now, that is baseless because the Mayor has shown that no hall owner was intimidated.

THE COURT: Leave that part out.

MR. MATTHEWS: Despite their attempt to lug it in by hearsay evidence, there is not a scintilla of evidence in this case that a single hall owner was ever intimidated.

THE COURT: Leave out the word "intimidated" and ask the question.

Q. Was it a fair offer of compromise that if halls would be provided upon proper payment for their use, the CIO would abandon all open air meetings and would hold all of their meetings in halls, was that a fair offer?

A. Yes, that was a fair offer, as long as you eliminate that "intimidation," as the Judge said. The offer is fair, Counselor, we won't dispute that.

Q. We will say not intimidation but as a condition to the offer that the hall owner be assured that he may rent with the permission of the Jersey City authorities to my clients.

MR. MATTHEWS: I object to that question, that isn't the letter at all.

MR. FRAZER: I didn't say it was the letter, I am speaking of the offer.

MR. MATTHEWS: That question is irrelevant.

THE COURT: I think you should say "with the approval" rather than what word you did use. Substitute "approval."

MR. MATTHEWS: Your Honor, they have been unable to prove this bluff about the hall owners.

THE COURT: I am not going into that.

MR. MATTHEWS: They want to put it on the record in this fashion.

THE COURT: "Approval." I will allow the question with that.

MR. MATTHEWS: Your Honor allows an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. An offer to hold meetings indoors and to abandon outdoor meetings if halls might be rented with the approval of the city authorities is a fair offer, isn't it?

A. Very fair. Might I say, Counselor, that has been the attitude of the governing body ever since I have been associated with the governing body until this trouble started.

Q. Well, now, the tone of my letter was courteous, wasn't it?

A. Very, very well prepared. You must have given some considerable thought and preparation to it.

Q. Yes, I prepared it carefully, but don't you think it was entitled to a less summary reply than Mr. Hamill gave?

MR. MATTHEWS: I object. He cannot interpret Jimmy Hamill's interpretation. The mayor may have considered it a whole lot but Jimmy may have considered it bunk.

MR. FRAZER: I didn't ask for his opinion as to Mr. Hamill's letter; I asked whether in the mayor's opinion my letter wasn't entitled to a less summary reply than Mr. Hamill vouchsafed.

MR. MATTHEWS: I object to this attempted Damon and Pythias attitude.

THE COURT: I don't think you should characterize it.

MR. MATTHEWS: Well, your Honor, what the mayor thinks——

MR. FRAZER: The Court has ruled in your favor.

MR. MATTHEWS: Sorry. It is again my defective hearing; my age does creep over my gray hair.

MR. FRAZER: And I do not ask any exception to the Court's ruling.

MR. MATTHEWS: Thank you.

Q. Mr. Hamill says in his letter in reply to my answer:

"Your letter, which is lengthy and discursive, contains a number of comments, suggestions, complaints and criticisms. These I am not answering now for the reason that no practical result would follow and no practical advantage could be gained by either of us from discussing them at this time."

A. That's just a little fencing, I think.
Q. That is just a little fencing?

MR. HAMILL: Oh, I object, if your Honor please.

MR. FRAZER: May I——

MR. HAMILL: Just a minute. I have an objection.

MR. FRAZER: The mayor said it was just a little fencing.

MR. HAMILL: I object to anybody interpreting what I mean. If I am put on the stand, I will tell Mr. Frazer what I think of his letter and what I think of mine, and I will tell him many things; I will tell him plenty before I get finished, and I will be here to receive his call to take the stand.

THE COURT: The mayor just said that he interpreted your letter as a little fencing.

MR. HAMILL: I can't interprete his letter because that is Carney's letter, written through the hand of Frazer.

MR. FRAZER: May I ask the Court——

MR. HAMILL: I wouldn't consider Frazer guilty of the sloppy composition of that screed that was thrown

on my desk. I didn't think it worthy of an answer and only out of courtesy for an old gentleman whose heart was good and his mind misled, I sat down and wrote him a short, courteous reply.

MR. FRAZER: Now, may I ask my question? I haven't come to a question yet.

THE COURT: I think the mayor answered it, Dean Frazer, didn't he?

MR. FRAZER: No, I started to ask a new one.

THE COURT: Oh.

MR. FRAZER: When Mr. Hamill so kindly volunteered his little touch of humor in the case.

MR. HAMILL: I will answer under subpœna just as well.

MR. FRAZER: Perhaps I better start it over again, if I may. I started a new question.

Q. Mr. Hamill said in his letter: "Your letter, which is lengthy and discursive, contains a number of comments, suggestions, complaints and criticisms. These I am not answering now for the reason that no practical result would follow and no practical advantage could be gained by either of us from discussing them at this time."

Did you notice that it said, "At this time," Mr. Mayor? Has there been any offer on the part of the Jersey City authorities to discuss them at any time since then?

MR. HAMILL: No, because there has been a charge of bad faith on the part of his client.

MR. FRAZER: Now, I objected to counsel interrupting my questions.

THE COURT: Yes, go ahead.

MR. HAMILL: You have no right—oh, wait a moment. Thank you for the smile. But I am afraid that it masks enmity.

MR. FRAZER: Oh, no, no.

MR. HAMILL: He is asking this witness to tell why I wrote a certain sentence. Now, does he know?

THE COURT: No, he has asked another question now.

MR. HAMILL: I don't usually divulge my reasons indirectly; I divulge them directly, to my correspondent.

MR. FRAZER: I don't know whether the mayor answered my question or not.

THE COURT: I think he was just about to answer it.

THE WITNESS: Yes.

Q. Have there been any efforts——

A. No.

Q. No. Mr. Mayor, what seems like weeks ago, I submitted to your counsel a list of Jersey City plants which at the time I identified with my initials S. F. and asked whether those plants were actual plants in Jersey City. Mr. Hamill returned them to me with two of the plants checkmarked —the Colonial Shoe Corporation and the Davis Baking Powder Company—which, as I recall it, he stated had been plants in Jersey City but had subsequently been removed.

A. (The witness nodded.)

Q. And that the rest of them were existing industries in Jersey City. I ask you whether in looking over that list, if you will be so kind as to do so, you can state any plants which to your knowledge are engaged in business which involves the shipments of goods outside of New Jersey?

MR. HERSHENSTEIN: If he knows.

MR. FRAZER: Of course, if he knows.

I am again confronted with the Donnybrook Fair of objections from three people.

MR. MATTHEWS: Well, Charlie could hardly be a member of Donnybrook Fair. Hamill and I are Irish.

You would have to say it is not a Donnybrook Fair, I think.

MR. FRAZER: The Irish claim all, don't they?

MR. MATTHEWS: Well, we claim you too.

MR. FRAZER: Thank you.

A. I would say, Counsel, there is a quite a few——
Q. I mean we could say the Colgate Company, for one?
A. Yes; and the American Can.
Q. The American Can?
A. Yes.

MR. MATTHEWS: What is the purpose of these questions, may I ask, if your Honor please?

A. (Continuing.) I would say all those concerns do have interstate business. I would say that the majority of them there do have.

MR. FRAZER: I would like to offer this. Mr. Hamill had earlier suggested it be made a matter of stipulation.

MR. HAMILL: Oh, yes; all except——

MR. FRAZER: Yes, I have called attention to those check-marked.

MR. HAMILL: These are some of the industries that we are protecting.

THE WITNESS: Yes.

MR. HAMILL: Yes, except the two that I pointed out to Mr. Frazer.

THE CLERK: Any objection?

MR. HAMILL: No objection.

(Marked Exhibit P-37.)

Q. Now in addition to the ordinance which Mr. Hamill referred to in his letter of December 20th, which we have

been considering, you have in Jersey City also a placard, so-called placard, anti-placard ordinance, have you not?

A. What is that?

Q. Well, I will show you what I am sure is a true copy of it; an ordinance to prohibit the placing, carrying or exhibiting on sidewalks or roadways of show boards, placards, banners or signs for the purpose of displaying them, and prescribing the penalties for the violation thereof.

A. (The witness nodded.)

Q. That seems to have been adopted on May 18, 1937; is that right?

A. That is right; after our election.

Q. Now, would you mind looking at that and telling me whether that is a true copy?

A. I am familiar with it, Counselor.

Q. Well, I just wanted to be sure whether what I am handing you is a true copy, because I think it will save trouble.

A. Yes, that is it.

Q. Thank you very much.

MR. MATTHEWS: Is that the ordinance that was upheld in the 5th Avenue Coach case, Mr. Frazer?

MR. FRAZER: I don't know. I was just wondering whether you had any objection to my introducing the ordinance?

MR. MATTHEWS: Well, I haven't seen it at all, Spaulding.

MR. FRAZER: Very well. Satisfy your curiosity, Mr. Matthews.

MR. MATTHEWS: Well, shall we take this off from the bottom, "taken off June 13th from the record book in the office of the city clerk. Ashley Carrick."

MR. FRAZER: Yes. Usually when I turn something down——

MR. MATTHEWS: You don't expect me to see it.

MR. FRAZER: No, if I do turn it down, I do not mean to include it in the offer. Otherwise I would not turn it down. I didn't want to be asleep at the switch.

MR. MATTHEWS: No, don't tell me that you would be asleep at the switch. You never have.

MR. FRAZER: Mr. Ashley Carrick, who comes from a very fine family, as you know, took that off the——

MR. MATTHEWS: The boy that got the black eye, was he?

MR. FRAZER: Exactly; the boy who was——

MR. MATTHEWS: Deported?

MR. FRAZER: Deported.

MR. MATTHEWS: And the boy who got on the ferry.

MR. FRAZER: Exactly, the same man.

MR. MATTHEWS: Well, let's take Ash out of it. Shall I tear it?

MR. FRAZER: Take it out.

MR. MATTHEWS: Yes. I hope I don't tear the ordinance.

MR. FRAZER: Oh, be careful, will you? Be careful.

(The clerk removed the portion indicated.)

MR. FRAZER: Now, I would like to offer that, Mr. Matthews.

MR. MATTHEWS: I just want to examine it after I take off Mr. Carrick's name, please.

(Mr. Matthews conferred with Mr. Hershenstein.)

MR. MATTHEWS: I understand from Mr. Hershenstein that there is no objection to that, and I have no objection, as the counsel conducting the examination.

(Received in evidence and marked Exhibit P-38.)

Q. Mr. Mayor, do you remember that in 1936, during the legislative session, there was pending a bill in the Legislature of New Jersey which is popularly referred to as the anti-injunction bill?

A. Yes, sir.

Q. Do you remember that during the pendency of that bill, or do you remember that that bill had the support of labor, generally?

A. Yes, sir.

Q. Do you remember that during the pendency of that bill you addressed, upon the letterhead of the National Democratic Committee, Frank Hague, Jersey City, New Jersey, a letter to the Honorable Senator from Hudson, Senator Stout?

A. Yes, sir.

Q. In reference to that bill?

A. I do.

MR. MATTHEWS: I object, if your Honor please. what relevancy can that have to this issue?

THE COURT: I don't know. I haven't seen the letter. May I see the letter?

MR. MATTHEWS: Well, what relevancy can the anti-injunction bill have to this issue?

(Document handed to the Court.)

MR. MATTHEWS: Chancellor Campbell opposed it, if I remember correctly.

THE WITNESS: I think a free discussion of that anti-injunction bill would be all right.

MR. MATTHEWS: That's fine, Mayor. Go to town.

Q. All right. Now, in that letter you said as follows, and if I am wrong you will remember it in substance, won't you?

A. Yes.

Q. "Dear Senator: The recent controversy over the provisions and effect of assembly bill 108 caused me to have the bill examined for the purpose of examining what position I thought Democratic members of the Senate should take concerning the bill. The analysis which I have caused to be made convinces me that its passage would not be in the best interest of this state. It is aimed directly at our Court of Chancery. It seeks to strip that court of the wide power possessed by it since the organization of the court itself. Such a radical step could have but one effect upon industry. Its enactment would not alone discourage new industries from coming here but will surely drive out hundreds of others now located in New Jersey, with consequent injury to thousands of our citizens, many of them members of labor organizations, and undoubtedly cause such people to lose their employment. My earnest conviction is that you will be serving not only the state but your party as well by voting against this measure. I do not think our party should accept responsibility for putting such a measure upon the statute books. I shall appreciate it if you will convey my views to your Democratic associates in the Senate. Yours respectfully, Frank Hague."

That's an accurate copy of the letter, is it not?

A. Yes, sir.

Q. And you were writing that letter as the leader of the Democratic Party in New Jersey?

A. Yes, sir.

Q. Now do you consider that that letter was something in favor of labor?

A. No, that letter, as I thought, was doing both labor and industry a great service.

Q. It was quite contrary to the desires of labor at that time, was it not?

A. No, Counselor. I am familiar with the conditions in other states, particularly the State of New York, which——

Q. Mr. Mayor, that is not responsive to my question. A. Oh, well, now——

MR. HERSHENSTEIN: He is trying to explain, Mr. Frazer.

MR. FRAZER: No, just a moment. I asked whether it was not quite contrary to the desires of labor in 1936. Now that can be responded to without telling me what labor is doing in New York State.

MR. MATTHEWS: Oh, the labor in New York would certainly be compelling on Mr. Hague as the leader of his party to give advice to New Jersey.

MR. FRAZER: It is a very simple question.

MR. MATTHEWS: Ab actu ad posse valet illatio.

THE COURT: I don't quite know what you mean by labor.

MR. FRAZER: Organized labor expressed through its unions.

THE COURT: In New Jersey?

MR. FRAZER: In New Jersey.

MR. MATTHEWS: Now, your Honor, he has made the question different. He said labor——

MR. FRAZER: Well, I have been referring to labor in this cause, unless otherwise and in more general terms, as labor in New Jersey. I think that is understood.

MR. MATTHEWS: Labor in New Jersey wasn't alone interested in his anti-injunction. The conditions in other states had to be considered.

THE COURT: Will you excuse me a minute?

MR. FRAZER: Not for New Jersey legislation.

MR. MATTHEWS: Oh, yes, sure, Spaulding.

(At this point a short recess was taken.)

Q. Mr. Mayor, before the recess we were discussing the anti-injunction bill of 1936. That bill is substantially in principle what is known as the Norris-LaGuardia bill that was enacted by Congress in 1934, isn't it?

A. I haven't examined that bill.

Q. You are not familiar with it?

THE COURT: You mean substantially in language.

MR. MATTHEWS: He says he doesn't know.

A. It is similar to it from what I can understand.

Q. Mr. Mayor, I understood you to say that before the episode leading up to the affair of November 29, 1937, it had been the practice in Jersey City not to deny permits for open air meetings.

A. Well, now, just a minute, your Honor. I don't think it is fair for the counsel to leave this injunction bill stand in such a manner as it is now without me being permitted to explain.

MR. FRAZER: Well, you will have that opportunity.

THE COURT: Your own counsel will have to do it unless he wants to let you.

THE WITNESS: Because I would like to be heard on that injunction bill.

THE COURT: Your own counsel can ask you any questions he wants. Dean Frazer could if he wanted to.

THE WITNESS: I think it is unfair, Counsel, for you to abruptly drop that in such a manner.

Q. Well, I appreciate that you have a right to have your examination re-directed.

A. But you simply take, Counselor—I don't want to interrupt you—labor was in favor of the bill, you were against it, and stop and leave me hanging there, I don't like that.

Q. That is the fate of many a witness.

A. Oh, I understand; I just want you to understand it.

MR. MATTHEWS: I have a big arrow pointed at it in my notes, Mayor, don't worry.

MR. HERSHENSTEIN: No, but the newspapers get the report before it has a chance to be explained.

MR. FRAZER: I don't understand we are trying this case for the newspapers.

MR. MATTHEWS: We are not.

A. You are not trying it for me, I promise you that, Counselor.

Q. May I repeat my question and ask whether I am right in saying that the practice in Jersey City prior to the affairs leading up to November 29, 1937, was not to deny permits for open air meetings, that's right?

A. We never denied them, no.

Q. But I am informed, I don't know how truthfully, that there was a movement for what was known as the Labor Court Reform, which applied for a permit in October of 1937, which was denied; do you know about that?

A. No—Labor Court, what is that?

Q. I don't know; I thought maybe you knew.

A. I don't.

Q. There was some agitation, I think, for a special court to hear labor matters.

A. I am not familiar with it.

Q. And there was an application made by a group interested in it for a public meeting which was denied, is that true?

A. I don't know, Counselor, I don't know who the Labor Court is. They certainly must be bad if they were denied a permit.

Q. You said that Mr. John L. Lewis was not a Red and that he was forced into the leadership of CIO, as I understand it, on account of the actions of Mr. Brophy. Do I quote you correctly?

A. Well, general actions of Brophy and Mr. Ernest and everybody else.

Q. Now, considering his character as a substantial Democrat——

MR. MATTHEWS: I object to that, if your Honor please.

THE COURT: Whose character?

MR. FRAZER: Mr. Lewis.

MR. MATTHEWS: He has no right to characterize him as such.

MR. FRAZER: I understood I was substantially saying what the Mayor had said; if I am wrong——

MR. MATTHEWS: He said nothing about his being a substantial Democrat unless you mean his avoirdupois.

MR. MATTHEWS: I withdraw those words.

Q. You know who I refer to when I say Mr. John L. Lewis?

A. I never refer to him as a Democrat.

Q. Suppose he were to make an application for an open air meeting in Jersey City on behalf of the CIO, would the authorities permit it?

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: You may answer.

A. It depends, Counselor, entirely upon the pulse of the people as to how they treat the application, which would be made known through the public press and the conditions that prevail in Jersey City at the present time and at the time the O'Connell and Bernard affair took place, no, he could not be allowed to come there because it would be endangering his life to permit him to come there.

Q. So that under present conditions your answer would be no?

A. No. It would be impossible because he represents the very group that we are opposing.

Q. Did you ever hear of a group known as the National Rededicationists?

MR. MATTHEWS: The what?

MR. FRAZER: The National Rededicationists.

MR. MATTHEWS: Good-night.

MR. FRAZER: You didn't, Mr. Matthews.

A. I suppose that is one of the groups that the communists is clever enough to put a beautiful title on and a beautiful color. I don't know who they are.

Q. Well, one of them is Norman Thomas.

A. Well, that lets them out right there.

Q. Well, my information is, Mr. Mayor, that other members of the committee are Mr. Herbert Hoover, Mr. John W. Davis, Mr. Alf Landon and Mr. Beers, the Boy Scout leader. Would that change your view?

MR. MATTHEWS: Change his view on Thomas?

MR. FRAZER: No, on the National Rededicationists.

A. Well, I would like to know more about it. I am very suspicious that some of these gentlemen has been deceived. They would not knowingly go into that group.

Q. Mr. Mayor, you referred in your testimony, or not in your testimony but in your speech of January 12th, wasn't it?

A. You mean at the Armory?

Q. Yes, January 12th.

A. Yes——

Q. Among other Red organization you referred to the Lawyers Guild?

A. Yes.

Q. Did you know that since that speech the Lawyers Guild had been unable to procure a hall in which to speak or meet in Jersey City?

MR. MATTHEWS: I object, if your Honor please, they are not a party to this proceeding.

THE COURT: I will rule as I did before on it.

MR. FRAZER: I don't remember how your Honor ruled.

THE COURT: Against it.

MR. FRAZER: Against it. I will ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Now, in Commissioner Casey's reply to my letter, as I recall it, of December 23d, there was annexed a copy of the resolution stated to have been adopted by the meeting of the veterans and signed by certain members calling themselves a Committee of Veterans of Jersey City, and the names signed were Mr. Hugh A. Kelly as chairman of the committee, who I understand is the Governor's secretary—

A. Yes.

Q. There were five other gentlemen who signed their names, Charles A. Peterson; do you know him, does he hold any public job?

A. I don't know. I would have to check on that, Counselor.

Q. Well, I wonder if I can refresh your memory. Isn't he employed in the Second District Court of Jersey City?

A. Yes, I think he is; I am not sure, Counselor.

Q. David A. Mimmo.

A. I don't think he holds a position, Dave Nimmo.

Q. You think not?

A. I think not.

Q. William E. Malinka?

A. I am not personally acquainted with him, Counselor.

Q. You don't know him?

A. I have heard his name but I don't know the gentleman.

Q. Well, would you know whether or not he was appointed by the School Board to a position?

A. Well, if the record shows it, yes.

Q. I have no record, this is merely my best information.

A. Well, I don't know; I wouldn't say no, I wouldn't say yes. It is possible. I say I am not acquainted with him personally.

Q. George A. Reilly?

A. I know George Reilly.

Q. Works for the Boulevard Commission, doesn't he?

A. I think he does.

Q. Louis F. J. Borgers?

A. Does the record show he occupies——

Q. Well, my information is he works in the Surrogate's office.

A. It is possible, I don't know these boys.

Q. And my information is that William E. Malinka was appointed as a member of the Optometry Board,—does that refresh your memory,—by Governor Moore?

A. I don't know, possibly.

Q. Now, Mr. Mayor, when you say that under the present temper of the people you would deny permits you determine in advance whether the matters which are to be spoken at those meetings for which permits are denied are of a type to lead to disorder?

A. Yes.

Q. You don't attempt in any way to find out what is going to be spoken at those meetings?

A. Well, not necessarily; it does not require that, Counselor; it entirely depends on who the application is.

Q. Now, the papers for many months have carried a sort of quotation "I am the law Hague." I understand that the circumstances under which that statement was made were very creditible to you, but isn't it a fact that you have such a dominating influence in affairs in Jersey City that your word is effectively the law there?

A. Well, of course, as head of the government for twenty-five years, associated with and as head of it, naturally everyone feels that they would confer with me and that my judgment would be ascertained in all questions because I am the oldest man today in actual service in the government of Jersey City and practically in the government of the county, and it is only natural, Counselor, that everyone would seek my advice and seek my judgment on that.

THE COURT: I will have to interrupt again. Sorry.

(12:17 P. M., following a short recess.)

By MR. FRAZER:

Q. Mr. Mayor, during the recess, one of the newspaper reporters spoke to me and said that on account of the intimacy of our examination, your voice sometimes didn't carry. Would you mind raising it a little?

A. Yes.

Q. So they can hear?

Now, as I recall, you were saying when the recess occurred, that your judgment was asked for in most instances?

A. Yes, sir.

Q. And I assume that when you have expressed your judgment, it is given great weight?

A. Well, it is considered very seriously, because of my long years of experience in municipal government and county and state government.

Q. How many employees are there in Jersey City?

A. On the payroll?

Q. Yes.

A. (No answer.)

Q. I mean roughly.

A. I don't imagine it goes over three thousand.

Q. And in the county?

A. Oh, the county probably is less. Well, maybe three thousand, twenty-five hundred. I am not sure.

Q. And when you say county, does that include——

A. Hudson County.

Q. The Boulevard?
A. Yes.
Q. As well?
A. Yes, all——
Q. Yes.
A. Counselor, you didn't let me finish, if I may.
Q. Oh, did I interrupt you before?
A. No.

MR. MATTHEWS: He hadn't finished his answer, as I recall it.

A. (Continuing.) On that "I am the law"—"I am the law."

Q. I thought that you had come to a stopping point——
A. Oh no.
Q. —when the Judge got up.
A. You see, that's unfair to me, to leave that abruptly cut off.
Q. Very well.

THE COURT: Yes, I think the Mayor ought to be allowed to finish his answer. What was the last answer?

MR. FRAZER: I am perfectly willing he should, sir. I didn't mean to cut him off.

THE COURT: Yes, I think it was my fault.

A. I have never desired to be the law, Counselor. I have always felt that the courts was the law and still maintain that the courts is the law of our state, city and county.

In this affair that quoted me, that was this man Zerner. He was present at a meeting at one of the churches in our city, a hundredth anniversary, at which I had the honor of being the principal speaker, and I was discussing a special service bureau there, and the Board of Education handling the boys, and I said that how two cases was brought to my office by the head, Dr. Hopkins, the assistant superintendent of schools—two boys had refused to go to school. One was

twelve and the other was thirteen years old, and he had decided that he was going to send these boys to a state institution for violating the truancy laws of our City, and the question was brought before me in my office in an official manner, and I discussed with the boys just exactly what was before them. I said to Dr. Hopkins, "Isn't there no way that we can adjust this matter whereby we can save these boys from being committed to a penal institution?"

I asked the boys then, was it possible for me to convey upon them and convince them that they should return to school, that I wanted them to become educated and be good boys, and their answer was, "No, no, that they did not like school, that they were tired of it, they did not get along with the teacher, and that they were tired, they wanted to go —that they would prefer to go to an institution."

I said: "Do you want to enter into a life of crime and be a bad boy?"

They said, "We do not care."

I then turned to the boys and said to the boys, "Don't you think it would be nice if we was to arrange to have you earn four of five dollars a week to support your mother and your family?"

He says, "Can that be possible?"

I said, "Well, if I tried, would you like that? You love your mother."

"I love my mother."

So the boys agreed. I then—Hopkins interrupted me; he says, "Mr. Mayor, that's a violation of the law. The Working Papers Law in this state is a 16 year period. You cannot send these boys to work."

I turned to him and said, "The boys are going to work. I am the law in this case."

Now, that's what was interpreted as "I am the law."

Now, I was glad of an opportunity, Counselor, to clear that matter up, because I have no desire of being the law. I have no desire of ignoring the courts which is authorized to interpret the law, and I have always been obedient to

courts and court orders, the same as I have in this case and in every other case.

Q. Now, you sent those boys to work despite the law?

A. Yes. I saved the boys from a criminal career.

Q. Now there is testimony in this case, Mayor, that there were some young girls down in the——

A. Parental home?

Q. —Harborside Building, who are under sixteen years of age. Are they doing it on the same basis?

A. No, I know nothing about those cases, Counselor. If I had my way those children would be in school.

THE COURT: Excuse me just a minute again, Dean Frazer. I am sure you understand the situation.

MR. FRAZER: I do perfectly, sir.

(At this point a short recess was taken.)

THE COURT: I apologize to you, Mr. Witness, for interrupting you that way.

Q. Had you finished your answer?

A. Well, other than as I understand, Counselor, the choice between the boys was a life of crime or violating this law in a technical manner. It probably lasted not more than six or seven months until we got the boys back into school again. I thank you for giving me that opportunity.

Q. Well, I said in opening that I understood it was not discreditable to you. Now, I want to ask, Mr. Mayor, whether realistically considered your statement at that time is not true of your position in Jersey City.

MR. HAMILL: I want to say to the Court that Mr. Matthews is conducting this examination and there may be some things that examining counsel might want to know.

MR. FRAZER: I beg your pardon, I didn't notice he was out of the room, Mr. Matthews.

THE COURT: No, I am the offender.

MR. MATTHEWS: I am sorry. He answered that it is not. He says that he respects the Court. He said that the courts are the law. That is realistic enough.

Q. I am asking him if it is true or not.

MR. MATTHEWS: His answer is no to that; he has already given it.

MR. FRAZER: Counsel is again testifying, may it please the Court.

A. No.

THE COURT: You may answer.

MR. MATTHEWS: No; he has answered.

Q. And yet despite the decisions of the New Jersey Court of Appeals in the Butterworth case, in the Edgewater case, of the United States Supreme Court in the so-called Griffin Georgia case, and the United States Supreme Court in the Oregon case, you carry on in Jersey City the same methods which you used before those decisions?

MR. MATTHEWS: I object, if your Honor please, there is no such testimony in this case and there will be a discussion of those cases with the Mayor in his examination. As one examines the Butterworth case and examines Black and Lloyd's opinions on what an unlawful assembly is and then examines Kalisch's opinion, one will find that unlawful assembly from the common law—and it is a common law offense—is just what we have defined it in this case, and that the conduct which has been prohibited in Jersey City is conduct in violation of the common law definition.

MR. FRAZER: May I say I am not asking the Mayor to construe the law, I am asking whether despite the decisions in those cases his conduct has not been the same.

MR. MATTHEWS: Your Honor, those are not the decisions and his conduct is not in violation of any de-

cisions. His statement is that the conduct of Jersey City is entirely in accordance with the law and I will show it to this Court in the examination of the Mayor.

MR. FRAZER: That is Mr. Matthews' privilege. I asked if the conduct had not been the same subsequently as previous to those decisions. I am not asking the Mayor to construe it.

THE COURT: I think, Dean Frazer, you will have to divide the question. You mentioned, I think, three decisions.

MR. FRAZER: I mentioned four, sir; I could mention six.

MR. MATTHEWS: In fact, there are a dozen including the Gitlow case that you didn't mention.

MR. FRAZER: Sounds like the man who murdered Garfield.

MR. MATTHEWS: Oh, no, Garfield Hays. Gitlow is contemporaneous with Garfield Hays but not with Garfield, whose name he took. Gitlow is a modern; he went to jail in New York for unlawful assembly.

Q. Since the decision in the Georgia case, Mr. Mayor, your police have taken up circulars from persons attempting to distribute them in Jersey City, have they not?

MR. MATTHEWS: I object, if your Honor please. He said they were taken up to prevent disorder, not in violation of the opinion.

MR. FRAZER: I am asking a question. I don't think counsel needs to explain every question I ask.

THE COURT: Would it be agreeable to counsel if I adjourned to a quarter to two? I don't like to keep interrupting.

MR. FRAZER: Very well, sir.

MR. MATTHEWS: All right, your Honor.

(Thereupon a recess was taken to 1:45 P. M.)

AFTERNOON SESSION.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Resumed).

BY MR. FRAZER:

(Question repeated by the reporter as follows:

"Since the decision in the Georgia case, Mr. Mayor, your police have taken up circulars from persons attempting to distribute them in Jersey City, have they not?

"MR. MATTHEWS: I object, if your Honor please. He said they were taken up to prevent disorder, not in violation of the opinion.")

THE COURT: This is the opinion, isn't it, Dean Frazer, this Butterworth case?

MR. FRAZER: No, this is the Georgia case, I think I referred to, the Griffin Georgia case.

THE COURT: Will you read that again?

(The reporter re-read the question.)

THE COURT: If you know.

MR. MATTHEWS: Of course, my objection was placed, your Honor didn't rule on it.

THE COURT: I will allow the question and give you an exception, adding "if you know, Mayor."

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: My objection was, you know, your Honor, that he already said that the only objection they had was disorder as created by them. It wasn't the mere giving of the circulars. He explicitly stated that on the record.

MR. FRAZER: I am not asking what the reason was. I am asking a simple question, purely.

THE COURT: Yes, you may answer, Mayor; if you know.

A. Yes. As I stated, Counselor, earlier——

Q. You have answered the question, Mr. Mayor.

A. Well, I said yes, but I told you that they were taken up because of the fact that they were about to create disorder and it was displeasing to the people who were receiving them, being forced upon their person.

Q. Now, in Coughlin v. Sullivan, an opinion by Justice Minturn, this same ordinance was under construction, was it not?

A. I think that is true.

Q. And in that case there were circulars distributed by a group known as the Faithful Government Forces. Ever hear of them?

A. Is that one of those political groups?

Q. I don't know.

A. I think that Bill Coughlin was active at that time. I think that was a political group.

Q. I am reading from Justice Minturn's opinion. "The record shows that the pamphlets which criticised the municipal administration were all distributed in stores save one pamphlet given to a pedestrian."

That was in a local Jersey City campaign, was it not?

A. I believe it was.

Q. And the persons who distributed those circulars were arrested?

A. Oh——

Q. And sentenced under the ordinance?

A. They must——

Q. And this was on certiorari?

A. They must have been.

Q. That case was decided on September 29, 1924.

A. What Sullivan is that, Counselor? Is that the health officer?

Q. No, it is Judge Leo Sullivan; Judge Leo Sullivan.

A. Oh, oh.

Q. Who was the Judge who convicted——

A. We have a health officer Sullivan, yes. The Judge has been dead so long.

Q. So that in 1924 already there was a decision of the Supreme Court of this State holding that the arrest fo he distribution of circulars of a public character was improper?

A. Oh, no, that wasn't it.

MR. MATTHEWS: That was not the decision, your Honor please.

A. That decision was before the adoption of this ordinance.

THE COURT: You took that off my bench, didn't you, Dean?

MR. FRAZER: Yes, your Honor, I did.

A. (Continuing.) Wasn't that before the adoption of this ordinance, Counselor?

Q. Beg pardon?

A. Wasn't that before the adoption of this ordinance?

Q. What is the date of this ordinance?

A. Wasn't that the case that led up to the adoption of the ordinance?

Q. The ordinance in question was adopted January 22, 1924, and the case was decided in December, 1924, the same year.

MR. MATTHEWS: But your Honor will recall, however, that case, I am prompted by Mr. Hershenstein, that in that case the circular was not distributed on the street, it was given to a storekeeper.

MR. HERSHENSTEIN: Right.

MR. FRAZER: That is not right.

THE COURT: The opinion says "distributed in stores save one pamphlet given to a pedestrian."

MR. FRAZER: There was proof made in the cause that there was distribution to a pedestrian.

MR. MATTHEWS: One pamphlet to a pedestrian; the others were distributed in a store.

MR. FRAZER: Yes.

THE COURT: He distinguishes, I mean Justice Minturn distinguishes between advertising circulars and circulars which deal with the management or alleged management of municipal affairs—that is quoted—in that opinion he distinguishes.

MR. FRAZER: The character of the circular being distributed, circulars of public import in which the public would be interested.

MR. MATTHEWS: The only way to ask the Mayor a question on that opinion is to confront him with the findings of the Court in the words of the Court.

MR. FRAZER: I confronted him with the opinion; I was reading from the opinion.

THE COURT: I will read from the opinion, I mean if this isn't satisfactory—the part I am reading, "Defendants were convicted of violating the above ordinance and handing out circulars in front of a theatre where a moving picture exalting the activities of the Ku Klux was being exhibited. The circular distributed bore the announcement——" is that this case—no, that is another case, I beg your pardon.

MR. FRAZER: That is a citation from a New York court in support of the Court's opinion here, which shows the basis and ground of the Court's opinion.

THE COURT: Yes, that is a New York case. It didn't have it in quotation marks, which misled me. The only part with reference to the facts in New Jersey is the part I already read. "The record shows that

the pamphlets which criticised the municipal administration were all distributed in stores save one pamphlet given to a pedestrian."

MR. MATTHEWS: But the holding of the Court was what I thought he ought to be confronted with, your Honor.

THE COURT: I beg your pardon—the conviction was set aside.

MR. MATTHEWS: I mean the reason why the Court set the conviction aside.

MR. FRAZER: If your Honor will let me have it I will be very glad to read it to the Mayor.

THE COURT: I think I read it.

MR. FRAZER: I thought you did, but I would like to accommodate counsel if he wishes more of it. Now, wait a minute, wait a minute, I don't like to be surrounded by people all the time.

MR. MATTHEWS: I love to surround you but what I want to know is——

THE COURT: Dean Frazer has claustrophobia, so stay away.

MR. MATTHEWS: Well, that isn't so bad to have sometimes; I go away.

Q. I have the wrong page now; this is what the Court reasoned: "It is a matter of common knowledge, of which the Court will take judicial notice, that certain circulars, pamphlets, &c., especially such as advertise commercial or business enterprises, when indiscriminately distributed to pedestrians, having no desire or use for them, are cast away so as to litter the streets. The natural and ordinary result of the distribution of such circulars being to litter the streets, an ordinance prohibiting their distribution is

adapted to and reasonably necessary to prevent such evil. The principle is elucidated in Harvard v. Tremble, 97 N. J. Law 173.

"The pamphlet here in question is of a different nature, containing as it does the views of a number of citizens as to the management or alleged management of municipal affairs, a matter in which they, as well as all other persons, are vitally concerned. It cannot be presumed in the absence of evidence that the recipients of such pamphlets would throw them away. As to such pamphlets, containing matter of public interest, the ordinance operates unreasonably in this respect beyond the occasion of its enactment and is unduly oppressive."

MR. MATTHEWS: Thank you.

Q. That is the reasoning of the Court. Now, that was decided upon this particular ordinance in December, 1924. I understood you to say, Mr. Mayor, that you followed the rulings of the Court. Have you followed the ruling of the Court that the interference with distribution of pamphlets of this type is improper?

MR. MATTHEWS: What type?

MR. FRAZER: Of the type which has just been described in the section which I read from Justice Minturn's opinion.

MR. MATTHEWS: There is no evidence any such pamphlets were distributed.

THE COURT: Of the type offered in evidence.

MR. MATTHEWS: That is different.

MR. FRAZER: I am asking him whether the——

THE COURT: Add——

MR. FRAZER: —type described by Justice Minturn, I will refer to the Court as to whether those in evidence are of that type or not——

THE COURT: Will you answer, Mayor?

THE WITNESS: Yes.

A. As I understand, Counselor,—is this the case that was taken up by the second branch of the Supreme Court from Justice Minturn's opinion? Was that taken up?

Q. No, sir.

A. Well, how——

Q. It was Justice Minturn sitting for the Supreme Court.

A. Well, could you enlighten me how this same identical ordinance could be sustained by Justice Case?

Q. I can.

A. How did that happen?

Q. It was never sustained by Justice Case.

A. Yes, sir.

Q. Not this same identical ordinance. Section two of this ordinance was sustained as a proper exercise of the police power.

A. I am not trying to avoid anything. I am trying to be enlightening.

Q. I am trying to enlighten you Mr. Mayor.

A. There seems to be some confusion——

THE COURT: Section two, Mayor.

THE WITNESS: It is a little mixed up to me.

THE COURT: Section two was sustained by Justice Case, which covered, as I understand it, unsolicited advertising circulars.

MR. FRAZER: Which were distributed by leaving in mail boxes and throwing in areaways.

Section one is the one which is here being dealt with and which was the subject of Justice Minturn's opinion.

MR. MATTHEWS: You didn't read the balance of that opinion.

MR. FRAZER: You can read any part of it that you wish to.

MR. MATTHEWS: With the permission of counsel and the permission of the Court, adding to where Mr. Frazer read, his last wording being "is unduly oppressive," the Court said:

"The record shows that only one pamphlet was handed to a person on the public streets. Considering the mischief to be prevented and the express language of the ordinance, it is evident that a distribution to the public generally, or to a considerable number of people is intended and not a handing to only one or two persons. Under my other interpretation there could exist no real evil to be prevented."

So the point is this, that this opinion said if it were to be given to the public generally, then indeed it would make a difference.

MR. FRAZER: Then we will continue where Mr. Matthews left off, or a little further along. Referring to the New York ordinance——

MR. MATTHEWS: May I look?

MR. FRAZER: Yes, certainly. You may not look over my shoulder but close at my side.

MR. MATTHEWS: Close at your side, yes.

MR. FRAZER: "The New York ordinance provides 'no person shall throw, cast or distribute any handbill, circular, card or other advertising matter whatsoever in or upon any street or public place.' "

Very similar. The Court then goes on to state the portion which your Honor started to read, about the Ku Klux Klan, this case being cited in support of Justice Minturn's position. He quotes the Court's remarks:

"It would be a dangerous and an un-American thing to sustain an interpretation of a city ordinance

which would prohibit the free distribution of a body of citizens"——

MR. MATTHEWS: "by a body."

MR. FRAZER: —"by a body of citizens of a pamphlet setting forth their views against what they believe to be a movement subversive of their rights as citizens," and so on. That was a very broad——

MR. MATTHEWS: Read the and so on.

MR. FRAZER: You may read the and so on, if you wish to.

MR. MATTHEWS: And so on, quoting: "The Constitution of the State of New York . . . provide that every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press. The primary purpose of the ordinance . . . was to prevent the littering of streets with commercial advertising . . . The ordinance within reasonable limits is a proper one and should be sustained but no city ordinance, no matter how worthy its intendment, should be permited in any way to curtail any of the fundamental rights of the citizen. The circular in question was a protest against what was believed to be a movement which encouraged discrimination against certain religious beliefs, and whether or not there was a sound basis for that belief, they were within their rights in making public their protest against such a movement and to make known their protest they used possibly the only means available by the distribution of circulars and pamphlets to the public. People v. Johnson, 117 Miscellaneous Reporter, 133, 191 New York Supplement, 750, case decided 1921."

MR. FRAZER: That was very nice of you.

MR. MATTHEWS: Thank you, Spaulding. I learned it long ago.

"These views seem to be illustrative of the general principle which should govern cases upon the constitutional guaranty of free speech insofar as that right can be reconciled with the general police power of the municipality to preserve law and order in the administration of municipal affairs."

The accentuation is mine, it is not in the record.

"Finally, this view of the situation results in setting aside the conviction."

MR. FRAZER: Thank you. You have saved my voice.

MR. MATTHEWS: You are welcome, Spaulding.

MR. FRAZER: I think the witness already answered the question.

Q. I am right? You did, did you not, Mayor?

A. (The witness nodded.)

Q. Now, following that decision, there was a well known decision in Edgewater in which Miss Nancy Cox was the prosecutor.

A. Is that the Bodine——

Q. That is the Bodine case.

A. Justice Bodine's case?

Q. Yes. That is the Bodine decision. You know that.

THE COURT: Is that a cited case, Mr. Frazer?

MR. FRAZER: Yes, sir.

THE COURT: Could I have the citation?

MR. FRAZER: Very glad to give it to you. I think the Court——

THE COURT: Oh, is that the Edgewater case?

MR. FRAZER: That is the Edgewater case.

THE COURT: Allen?

MR. STOFFER: It is unreported.

MR. FRAZER: Oh, it is unreported, and we gave you a copy of the opinion.

THE COURT: Oh, did you hand it to me? I beg your pardon. Oh, yes. No, I don't——

MR. STOFFER: It was in the same volume; it is in the 12 Miscellaneous volume.

MR. KAPLAN: Here it is again.

THE COURT: Oh, all right.

MR. FRAZER: Here is another copy of it, your Honor (handing to the Court).

THE COURT: All right; thank you.

MR. MATTHEWS: How would the Mayor be familiar with it if it is not reported, Spauld?

MR. FRAZER: He said it is familiar to him, and I imagine your very able law department keeps him advised in matters of municipal importance.

MR. MATTHEWS: My department?

MR. FRAZER: Well, I always associate counsel with his client.

MR. MATTHEWS: That is very nice of you, Spaulding. I hope I don't have to do that with you in your case.

MR. FRAZER: I hope you will.

Q. So that, Mayor, actually, in the daily functioning of the government of Jersey City, your statement made under the circumstances we discussed earlier, "I am the law," is to all practical intents and purposes true, isn't it?

A. Yes.

MR. MATTHEWS: What is that? I object to that question.

THE WITNESS: What was that?

MR. MATTHEWS: You don't know what he asked you, Mayor. Will you repeat the question?

THE WITNESS: He asked me——

MR. MATTHEWS: Just a minute. Let him repeat the question.

THE WITNESS: Well, I know——

MR. MATTHEWS: Will you listen to this question?

(Pending question and answer read by the reporter.)

THE WITNESS: I misunderstood him.

MR. MATTHEWS: Yes, you did, Mayor.

THE WITNESS: I misunderstood the Counselor. I thought he meant in an advisory capacity, that I was consulted with all the different departments. Now I don't like the idea of you injecting "I am the law."

Q. Well, I was simply trying to summarize your position.

A. Yes.

MR. MATTHEWS: He was simply trying to tie you up in a knot, and I walked in in time. The answer is you don't, isn't it?

(The witness nodded.)

MR. FRAZER: Now, if it please the Court, I would like to ask permission to allow Mr. Ernst to ask the mayor a few questions.

MR. MATTHEWS: I have no objection. I think Mr. Ernst ought to be allowed to ask the mayor some questions.

THE COURT: All right.

By Mr. Ernst:

Q. Mayor, what year did you go to Russia?

A. I think it was '36.

Q. '36?

A. It is two years this summer, this July.

Q. You found an absence of the right of public assembly, I think you testified, people couldn't talk on street corners?

A. No, nobody was allowed to talk on street corners.

Q. And there was an absence of freedom of press?

A. Well, the press was strangled.

Q. Strangled?

A. There was no such thing as press.

Q. And the right of religious worship?

A. No such thing as religious worship.

Q. Now, one of the distinguishing features between this democracy and Russia is that we have that bill of rights for free speech, free press, religious worship?

A. Yes, sir.

Q. Public assemblage. Are we agreed?

A. I agree. That's what we are defending here.

Q. That's right. That's the issue. Now will you give me your definition in any words you want of the words people use now called "Nazi," "Naziism"?

Mr. Matthews: I object to that as immaterial and irrelevant to this issue.

The Court: I think we had it once, Mr. Matthews. I will allow it again.

Mr. Matthews: Nazi?

Mr. Ernst: No.

The Court: Didn't we?

Mr. Ernst: Your Honor, I don't recall it.

Mr. Matthews: No.

The Court: We had some question about Naziism, I remember.

MR. ERNST: Yes, we had a question as to whether they were allowed in, whether they were banned from the Civil Liberties. I would like to get the general definition.

A. Well, you will have to give that. I have no definition for that.

Q. In your opinion, does the word "Nazi" mean the same as "Communism," in that there is always a denial of free speech, free press, public assemblage, and freedom of religious worship?

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: If the mayor knows. I don't know whether he knows.

MR. MATTHEWS: The mayor might be asked whether or not he thought Mr. Ernst would look good in a brown suit, but it wouldn't have anything to do with this case.

THE COURT: You may answer. You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Sealed)

A. I will not set myself up as an expert in those isms. I don't know.

Q. You can't do it. Can you define——

A. The only ism I feel I am an expert in is Communism.

Q. Can you define Fascism?

A. No, you define that.

Q. You can't define that either. Will you agree with me that under Naziism and Fascism there is also not that degree of civil liberties which we practice in this democracy?

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: You may answer. I think it is a fact anyway.

Q. Well, I just wanted to know whether the mayor knew it or whether his discrimination was only in one direction as to permits and civil liberties.

Will you repeat my question, please?

(Question repeated by the reporter.)

A. We have never been confronted in this country with those types of isms, as I recollect, not in Jersey City. Therefore I am not qualified to discuss it or to explain just what they mean.

Q. You have made no investigation or study of it?

A. There is no occasion for it. It is absent; it is entirely absent.

Q. Oh, Mayor, I didn't ask you whether it was absent.

A. How can I qualify if I have never been confronted with it?

Q. Just a moment. I have just asked you a simple question.

A. I am trying to answer it.

Q. No, you are not. I have asked you whether you have ever investigated it.

MR. MATTHEWS: He said he had not, he had no occasion.

A. I had no occasion.

Q. I don't care whether you had any occasion. I want to know—you can tell that to your counsel later—did you ever investigate whether you had occasion or not?

A. No.

MR. MATTHEWS: How can he investigate it if he had no occasion?

MR. ERNST: All right. Let us have an answer to the question and we will get along more quickly.

Q. Have you ever investigation sufficiently to give us a definition of I. W. W.?

A. Of what?

Q. Of I. W. W.?

A. Other than what I read in the public papers I never investigated that; we were never confronted with that either.

Q. In your opinion would you say that the I. W. W. is the same as Communism?

A. Yes, yes, that is Communism under another name.

Q. How about——

MR. HERSHENSTEIN: Let him answer.

Q. How about the Anarchist?

A. The I. W. W. was just a little too rough; they were hanging them all.

Q. I am not asking you——

A. Just a minute.

Q. No, no.

A. Just a minute, you——

Q. No, I am going to ask you questions.

A. Yes, but before I answer them don't smother me. Just a minute. We got along very peacefully——

MR. ERNST: Your Honor, I want a responsive answer from this witness. It is about time he answered my questions.

THE WITNESS: We got along peacefully until this gentleman injected himself.

MR. ERNST: No evasive answers to questions.

MR. MATTHEWS: He has not evaded answers to any questions.

THE COURT: Mr. Ernst, may we cool down a minute? It is a curious thing the difference between actual government and paper constitutions. I don't know whether I will be accused of being a Communist but I have the Soviet constitution here, as I am writing a book on Federations, and in Article 125 the people of Russia are guaranteed freedom of speech, freedom of the press, freedom to assemble and hold mass meetings,

freedom of street processions and demonstrations. I think it will be agreed that those are more honored in the breach than in the observance.

MR. MATTHEWS: And so do the people who stand for that in America. That is what the Mayor is trying to explain to Mr. Ernst.

MR. ERNST: Will counsel please not answer.

MR. MATTHEWS: Don't interrupt the witness and he will answer every question.

Q. If you are going to be evasive and going around the block——

MR. MATTHEWS: I object, he is not being evasive and not going around the block.

Q. Now, if you will let me go on with my next question. Did you investigate so that you can give me a definition of anarchy or anarchists, just whether you investigated?

A. No.

Q. Would you, in your opinion, say whether anarchy or anarchist is the same as communism?

MR. MATTHEWS: I object to that.

A. In my estimation, yes.

Q. He says yes. Now, do I understand that all of these groups, in your opinion, are what you have termed "undesirables?"

A. Yes, sir—all who, what groups?

Q. All of these groups that are the same, Anarchists, I. W. W.'s, Socialists, Communists.

MR. MATTHEWS: You haven't spoken of Socialists before.

THE COURT: I don't think that has been mentioned.

Q. I will ask you then: Have you investigated to find out what Socialists or Socialism is?

A. No.

Q. In your opinion would you sal Socialists are the same as Communists?

A. The Socialists of late have joined in with the Communists; that's been proven by their leader.

Q. I am not going to ask you—you can get that out later, how proven. You now say that they are the same?

A. Yes, sir.

Q. Mayor, in your investigation in regard to me, did you run across the fact that I was denied the right to enter Soviet Russia a year after you got in, did you ever run across that fact? Yes or no.

A. Are you sincere with that?

Q. I am sincere, sir.

A. Do you want my opinion?

Q. I just want to know, no opinion from you at all, sir.

A. Do you want an answer?

Q. I want to know just the answer, yes or no, did you run across that fact?

A. If you are here——

Q. No, no, Mayor. Did you run across the fact?

MR. MATTHEWS: I submit he is entitled to answer.

MR. ERNST: He either ran across it or he didn't.

A. Just a minute——

MR. ERNST: Your Honor, I don't want speeches.

A. I just want to confront you with the fact.

Q. I just want to know whether you ever ran across the fact.

A. This is an act you are putting on. You weren't denied any visas; don't try to ask me that question.

Q. I am asking you——

A. Don't insult any intelligence.

Q. I am merely asking you did you or not run across that fact?

A. No, I did not.

Q. That's all.

A. And I know very well it is an act, you and your side partner, is putting on here. You asked Commissioner Casey the same thing.

Q. Now, let's go on with the examination, may we?

A. Arthur Baldwin.

Q. In the course of your investigation you came to the conclusion, as you testified, that Morris Ernst was the man who had instigated the CIO. I want to ask you just simple questions. Did you come to that conclusion from newspapers?

A. I come to that conclusion from my investigation of watching and studying you.

Q. Now, will you kindly answer my question? In your investigation and study did you get that out of newspapers?

A. No.

Q. No. Did you get it out of a book?

A. No, I got it out of the people.

Q. Now, Mr. Mayor——

A. Just a minute. Did I get it out of a book. Why don't you let me tell you where I got it?

Q. I will get it my way.

A. Oh, no, you don't want that answer.

THE COURT: Just answer the questions, Mayor.

Q. Just answer the questions. Mr. Matthews can make notes, he has pages of them.

MR. MATTHEWS: Not on your testimony, nothing so far.

A. Did I get it out of a book.

Q. No book. Now, did you get it from a person?

A. Dozens of persons.

Q. All right. Will you name me one, just one. Don't name me dozens.

A. Just a minute——

Q. Name me one person.

A. Just a minute, you have been endeavoring for the last six months or a year——

MR. ERNST: Your Honor please, that is not responsive.

THE COURT: Please answer the questions, Mayor.

Q. Just answer the questions.

THE WITNESS: Now, your Honor, in fairness to me and to the people of this country I am not going to be permitted to allow this man to ask questions and answer them. Now, there is no use of us having any disagreement on this matter.

THE COURT: Mr. Matthews will clear it up for you.

THE WITNESS: The country is watching these proceedings and this man is not going to stand here and browbeat me, and I ask for the protection of the Court.

MR. ERNST: Your Honor please, I only want to find out if he got it from a person if so, to name one. Now, you can name a person. I didn't even ask him to name twelve; he said a dozen. I said "Name me one person from whom you got the information on which you base that statement."

A. In order for me to go to work and explain what I learned about you——

Q. I didn't ask you——

A. I cannot answer your question yes or no.

Q. I didn't ask what you learned about me, I asked you to name a person——

A. I told you——

Q. Can you name me one person?

A. I am trying to name them and you won't allow me.

Q. Name me one.

A. I am going to name twelve.

Q. You are going to name one; you can name eleven for Matthews.

A. No, I will name twelve to you.

Q. Now, behave yourelf, Mayor.

A. You behave yourself.

Q. We can get through quickly if the Mayor will act as if we were in a court room. Name me one.

A. You talked with Senator Milton, haven't you? You dined with Senator Milton.

Q. I didn't ask you if I dined with him. I ask you whether Milton gave you the information on which you made the statement.

A. You talked with Eddie O'Mara, didn't you?

Q. I didn't ask who I talked to, Mayor. Maybe you don't understand it.

A. I understand it only too well.

Q. No, you can't understand it if you answer it that way. I merely asked you to give me the name of one person which led you to make the statement that I was the inspiration for the CIO, not whether I dined or ate with him.

A. Well, why not refer to the records?

Q. Name me a name. You said there were twelve.

MR. MATTHEWS: Here is the record.

A. Why not refer to the records of the various investigations and the various write-ups?

Q. Mayor, I asked whether you read it out of a book.

MR. MATTHEWS: That isn't a book, that is the Fish report.

Q. I asked you if you got it from the newspapers. You said no. Then I asked if you got it from people and you said yes.

A. The Fish Investigating Committee is one.

Q. A person, I mean.

A. I am giving you that.

Q. Give me the name of a person who gave you this information.

A. Game me what information?

Q. Let's start again, Mayor. You said yesterday that I was the man who instigated the CIO.

MR. MATTHEWS: That is not his testimony.

MR. ERNST: I will read the testimony.

"That Morris Ernst was the man who was the instigator of this movement."

MR. MATTHEWS: What movement?

MR. ERNST: Referred to in the previous paragraph, the CIO—"in order to try to control this country." That is the quote.

MR. MATTHEWS: Page?

MR. ERNST: I haven't got the page.

MR. HERSHENSTEIN: Newspaper quote.

THE COURT: I think that is the testimony.

A. That's true.

MR. MATTHEWS: Not the CIO, the movement. The CIO is only one expression of the movement.

THE COURT: My recollection is it was the CIO.

Q. All right, Judge, let's clear that up too.

A. That is the truth, you know it is the truth and we are going to find out if it is the truth.

Q. I wish it were.

A. You are the general counsel.

Q. I wish I were.

A. You are the general counsel.

Q. Of what?

A. Of the CIO.

Q. I am not, sir, I wish I were.

A. You pose as such.

Q. I never posed as such.

A. You organized the Guild, the Newspaper Guild.

Q. Yes, sir, I am proud of that.

A. Did you organize the Lawyers Guild?

Q. I did, sir. Now, let's get back to your examination and stop this nonsense.

MR. MATTHEWS: This is not nonsense.

Q. I just gave you rope; you can subpœna me on the stand later.

MR. MATTHEWS: You have been subpœnaed.

Q. Just a minute, you can put me on. Now, let me get this; if you will be responsive we can finish in a short time.

THE WITNESS: Your Honor, I don't want to be disrespectful here but I am fearful that from the course of this gentleman's examination he is endeavoring to try to make this proceeding boisterous instead of orderly.

THE COURT: We will try to control that.

THE WITNESS: I don't want to be disrespectful to the Court.

THE COURT: I will use the gavel.

Q. Now, Mayor, let's start over again. Just think clearly and answer simply. You said yesterday that Morris Ernst was the man who was the instigator of this movement in order to try to control this country. What movement did you mean?

A. The American Labor movement.

Q. The American Labor movement. Now we have got that clear. Now I ask you, Mayor, did you get that information in part from any human being by word of mouth?

A. Thousands, thousands.

Q. Thousands. Now, Mayor——

A. All over the State of New York, all over the State of New Jersey.

Q. Now, Mayor, I want you to answer me one question. Name me one person that you got that information from by name.

A. On street corners.

Q. Name me a name.

A. Street corners.

Q. Is there anybody whose name you remember or were they all on street corners?

A. All on street corners and clubs and restaurants, that's common talk, you are posing as the great power.

Q. Can you name me one?

MR. HERSHENSTEIN: Let him finish.

A. (Continuing.) You are the one that brought this thing about.

Q. Name me a name.

A. You are posing as having it in your vest pocket.

MR. ERNST: Your Honor, I am asking him to tell me if he can name one.

A. (Continuing.) I am charging you personally with that.

Q. I want your to name me one name. You said you heard it from thousands. Can't you think of a person?

A. Why, it is common talk.

Q. Did you happen to ever talk to Herbert Lehman about it?

A. Who, the Governor?

Q. The Governor.

A. Why are you bringing him in?

Q. Because he appointed me, sir, to one of the highest positions in the State of New York.

A. Well, if Governor Lehman has been a fool and been fooled by you you are not fooling me.

Q. Did you talk to Governor Lehman?

A. No.

Q. Did you ever talk to President Roosevelt about it?

A. I don't have to talk to him either; if he has erred in his judgment that's his mistake.

MR. HERSHENSTEIN: Let him finish.

MR. ERNST: He doesn't have to finish, yes or no, and I don't have to have two counsel.

THE WITNESS: That's all right, he is a good man, too.

Q. Did you run across the fact that Governor Roosevelt while Governor of New York had appointed me a member of the Banking Commission of the State of New York?

A. Only in the paper, but I did run across this fact——

Q. No, no, sir, I will ask you——

A. (Continuing.) That while that bill that Senator——

MR. ERNST: Your Honor please, he just cannot do this in a court of law.

A. (Continuing.) I want to give you a little information.

Q. No, you can give it to Matthews.

A. I am going to give it to you.

MR. MATTHEWS: Matthews being your counsel, Mr Ernst is referring to.

Q. Now, did you run across the fact that Governor Earle had honored me with an appointment during last year? Just the fact, yes or no.

A. You hate yourself.

Q. Did you run across the fact?

A. No, I didn't run across the fact.

Q. Now, let's get on a ways. Did you make any investigation at all as to me prior to the time when the application for a permit for the meeting was turned down?

A. I have been reading about you in the various reports and your various activities as the head of this whole group.

Q. That is before the permit was turned down?

A. That is before and after.

Q. Before and after. Now, Mayor, have you got anything to say about the denial of permits for street corner meetings?

MR. MATTHEWS: I object to that, if your Honor please, whether he has anything to say. The evidence in this case is that there was no denial of permits except those in the record applied for for outdoor meetings, no hall meetings were denied.

MR. ERNST: Your Honor please, I am not addressing myself to denials at all.

THE COURT: You said street corner applications.

Q. Yes, street corner applications. Did he have anything to say about the denials or granting of street corner applications?

MR. MATTHEWS: I object because the witness isn't here to have anything to say, who should be interrogated.

THE COURT: The question is too general.

Q. Have you any power over the granting of permits for street corner meetings?

A. No, only a supervisory capacity; the Director of Public Safety does that.

Q. Now, do you know that Mr. Casey testified that prior to the time of his taking a position in regard to an application for a permit for various people, including myself, to speak, he made no investigation whatsoever in regard to the speakers?

MR. MATTHEWS: I object.

Q. Page 567 of the record.

MR. MATTHEWS: Just a minute, Mr. Mayor.

Q. Page 557. And I would like to read that to the Mayor to see whether he will agree with his supervised commissioner.

MR. MATTHEWS: That last part is not a part of the question, Mr. Mayor. I am following you, 557, but that happens to deal, Mr. Ernst, with Mr. Maverick.

MR. ERNST: If you would not fill up the record with talk and say what you think it has to do with me would go further.

MR. MATTHEWS: Well, if I had half the talk in the record that you have before I got here it would be just too bad. Mr. Casey testified about the machine guns.

Q. On page 551; I am in error as to 557. But I will come back to that in a moment. The question was asked: "Now there is a fourth person on that application, a man named Ernst. Did you look up whether he had spoken around at street corner meetings and whether there had ever been disturbances?

"A. (Of Mr. Casey.) I never heard of the gentleman until I saw his name on the application."

Do you recall that testimony, was that brought to your attention?

A. No, sir.

MR. MATTHEWS: Now, your Honor please, the testimony of Mr. Casey after that——

MR. ERNST: I just asked him and he answered it.

THE COURT: He has already answered it.

MR. ERNST: He answered it. We will just go along and save time.

Q. Mr. Mayor, do I understand from you that the American Civil Liberties Union is an undesirable organization, to use your words?

A. Yes, sir.

Q. And when you say it is an undesirable organization, do you mean only its directors, or do you mean its members?

A. I mean the heads of it. You are one of them.

Q. The heads of it. Now, does this mean, Mayor, in your judgment, that if the American Civil Liberties Union applies for a permit, they would be so undesirable that no one of its directors would be allowed to speak in Jersey City?

A. Not according to the testimony before the Fish Committee of Mr. Baldwin.

Q. Not according to your own judgment also?

A. My own judgment, they would not be entitled.

Q. They would not?

A. Because of the reputation of their heads.

Q. Well, now the answer is "They would not." We will get to the cause later.

Now, let me read you just a few of the names of the directors as of December, 1937, of the American Civil Liberties Union and see if you want to change your answer, or let it stand.

This is the National Committee, including among others, the following:

Edgar Blake, Bishop, Methodist Church, Detroit.

Richard C. Cabot, Professor of Social Ethics, Harvard University, and Professor of Medicine, Harvard Medical School.

John F. Finerty, lawyer, Washington, D. C.; former Assistant General Counsel, U. S. Railroad Administration.

Lloyd K. Garrison, Dean of Law School, University of Wisconsin; former chairman National Labor Relations Board.

Francis J. Gorman, first vice-president, United Textile Workers of America.

Hubert C. Herring, secretary of the Congregational Education Society.

Sidney Howard, playwright, president of Dramatists Guild of Authors League.

Frederic C. Howe, author, writer and lecturer; special adviser, Secretary of Agriculture; former Commissioner of Immigration at the Port of New York.

Henry T. Hunt, lawyer, former general counsel to Public Works Administration, Washington, D. C.

John A. Lapp, former Professor of Sociology, Marquette University, Milwaukee; assistant on labor relations to Administrator Public Works.

James H. Maurer, former president of the Pennsylvania State Federation of Labor.

Edward L. Parsons, Episcopal Bishop of California; president of Church League of Industrial Democracy.

Jeannette Rankin, former Congresswoman from Montana; now on staff of the National Council for the Prevention of War, Washington, D. C.

Clarence R. Skinner, clergyman; leader, Community Church, Boston; Professor of Applied Christianity, Tufts College.

Charney B. Vladeck, manager of the Jewish *Daily Forward*, New York City, and now majority leader in the county of Mayor LaGuardia.

A. F. Whitney, president, Brotherhood of Railway Trainmen.

L. Hollingsworth Wood, New York lawyer; president, National Urban League; chairman, Board of Trustees of Fisk University of Nashville.

Mary E. Woolley, former president of Mt. Holyoke College.

Richard S. Childs, business executive; president of City Club of New York.

Dorothy Kenyon, New York attorney; First Deputy Commissioner of Licenses, New York City; vice-president, Consumers' Co-Operative Services; member, Board of the New York Consumers' League.

Elmer Rice, playwright; honorary vice president Author's League of America.

William B. Spofford, executive secretary, Church League for Industrial Democracy; president, Christian Social Justice Fund.

Now, that was a long list, Mr. Mayor, and I will frame the question now, because you may have forgotten it.

As I understood you to say, the Civil Liberties Union was an undesirable organization, and the people at the top should not be allowed to speak in Jersey City.

MR. MATTHEWS: Now, if your Honor please——

Q. Do any——

MR. MATTHEWS: Just a minute.

Q. (Continuing.) Do any of the names which——

MR. MATTHEWS: That is not a statement of the fact.

MR. ERNST: I want to finish my question.

MR. MATTHEWS: This is just the window dressing. This is the National Committee that have lent their names, like so many others do, to an organization. The Mayor is talking about the Civil Liberties Committee as constituted by its directorate.

THE COURT: Mr. Matthews, wait a minute. I think he can talk for himself.

MR. ERNST: May I start over again, your Honor, please? When my question is finished, your counsel will have a right to object, and you should not answer until he has made his objection. I am not trying to trick you, but I don't want to be interrupted.

Q. You have heard that list of names, and I now ask you whether, having heard that list of names, consisting of members of the board of directors and the executive committee, the National Executive Committee, whether you

wish to change your testimony as to the fact that those names are unacceptable as speakers in Jersey City, under an application filed by the American Civil Liberties Union? Do you want to change your statement?

A. Do I want to change my statement?

Q. Yes.

A. No.

Q. So that none of those people could come into Jersey City at the moment——

A. You are just fooling them, that is all.

Q. No, no.

A. They don't understand.

Q. Now, Mayor, I didn't ask you that.

A. Yes. Well, I am answering that. You read off——

Q. But you can't answer me unless I ask you.

A. You——

Q. You are in a court of law and not at City Hall.

MR. MATTHEWS: I object to that.

A. You read off a list.

MR. MATTHEWS: You are in a court of law, but he should be confronted by a lawyer and not by a man who is peddling his wares.

MR. ERNST: If your Honor please, I am asking simple, direct questions. The Mayor hasn't had much experience on the stand, maybe—maybe he is being aggravated by his attorney. My questi s have all called for yes or no answers.

THE COURT: Read the question.

MR. ERNST: You can make your speeches later.

THE WITNESS: No, there is no speeches to be made here, just facts. You don't want to hear them.

MR. ERNST: All right, any time you produce them.

Q. Mayor, you are the vice chairman of the National Democratic Committee, aren't you?

MR. MATTHEWS: Objected to as immaterial to this issue. Your Honor has already ruled on that.

THE WITNESS: He was going to have me removed.

A. Yes.

MR. MATTHEWS: Just a minute. Don't answer, please.

THE WITNESS: A Communist going to have me removed from the Democratic national chairmanship!

MR. ERNST: He has already testified to it.

MR. MATTHEWS: No, he didn't. The Court ruled that out.

THE COURT: I sustained the objection.

MR. ERNST: If your Honor please, I would like to argue why I think it is material.

MR. MATTHEWS: It has already been argued.

MR. ERNST: I want to tell you exactly the testimony that I want to adduce.

MR. MATTHEWS: Now, I submit, if your Honor please, he just told him he was in a court of law—now he is trying to lug into this case what your Honor has already ruled out, to make it, as a newspaper called it this morning, a political case.

MR. ERNST: If your Honor please, I want to argue why I think it is admissible. I think it will become apparent to you, as it is to me, that it is pretty nearly imposible to argue the admissibility without pointing to the direction of the evidence.

MR. MATTHEWS: I object, if your Honor please, to arguing the admissibility of what has already been denied here.

MR. ERNST: It may be admissible on another score, your Honor, and may I point it out?

THE COURT: Yes.

MR. ERNST: Without interruption, just two minutes? The Mayor has used various terms, such as "offensive to the people of Jersey City," in respect to the CIO, and the Civil Liberties Union. He has also indicated that the American Labor Party was in general terms, I don't remember his exact adjective, but it is a synonym for the others, "unacceptable," a flim-flam, a deception, something of that kind. Now it seems to me that in order to get any kind of a definition that makes sense of any one of these vague words, which are the bases for the denial of the Civil Liberties in his mind—I want to examine him to find out whether the American Labor Party and the CIO is undesirable for other purposes in his life. I can go further and indicate it more clearly, if you wish me to. But out of respect for Mr. Matthews I am not indicating it at the moment.

THE WITNESS: Go the limit.

MR. ERNST: But——

THE WITNESS: Don't spare me.'

MR. ERNST: All right, sir.

THE WITNESS: Because I am not going to spare you.

MR. ERNST: Then I am going right on. Thank you.

THE WITNESS: Go right after it.

MR. ERNST: All right.

THE WITNESS: Take the gloves off.

Q. Let me ask you, then, you are the vice-chairman of the National Democratic Committee?

A. Yes, sir.

Q. Do you know, not as vice-chairman, but in your capacity as an active human being, that the United Mine

Workers of America is part of the CIO? That's John Lewis' own union.

A. The mine workers?

Q. Yes.

A. Yes.

Q. It is part of the CIO. Do you know whether the United Automobile Workers is part of the CIO?

A. Oh, the whole world knows that.

Q. All right.

A. The way they were murdered into it.

Q. I didn't ask you about the world. Let's just go easy on it.

MR. MATTHEWS: He said the way they were murdered into it. You misunderstood him.

Q. Do you know whether the Steel Workers Organizing Committee is part of the CIO—SWOC? Do you know that?

A. Yes, yes, everybody knows that.

Q. Do you know whether the rubber workers of Akron are part of the CIO?

A. According to the riots and bloodsheds and murders, yes.

Q. Yes.

A. I am enlightened by the public press.

Q. You still don't want to answer the questions yes or no, I take it?

A. I said yes.

Q. All right. Now I want to ask you, do you in your capacity as vice-chairman of the National Democratic Committee with respect to your use of the word "undesirables" repudiate the support——

MR. ERNST: I told him not to answer until you have an opportunity to object.

MR. MATTHEWS: Well, he is not going to pay any attention. Don't worry about that.

Q. (Continuing.) Do you repudiate the support of the United Mine Workers of America in aid of the——

MR. MATTHEWS: Go ahead. Go ahead. I am following your question.

Q. Continuing.) —in aid of the election of Senator Barclay at this moment? Do you repudiate——

MR. MATTHEWS: I object, if your Honor please. There is politics lugged in by this fellow who imagines he is a politician. Why, to ask that question, you are ruining your own cause. I object to it as being irrelevant.

THE COURT: Does the witness want to answer the question?

MR. MATTHEWS: No, the witness——

THE WITNESS: Yes, I don't object to answering that question.

Q. At-a-boy, Mayor. At-a-boy. Now we are going places.

MR. MATTHEWS: Just a minute.

MR. ERNST: That is all right; an honest witness here, if you will let him talk.

MR. MATTHEWS: Say, he isn't falling for you to tell him he is honest.

Q. Go ahead. Come on.

MR. MATTHEWS: Do you know what is said in the Good Book about one who pretends to be honest? That's you.

Q. Come on, come on, Mayor.

MR. MATTHEWS: Now, let the record show that while there was an objection launched against the Mayor testifying as to the vice-chairman of the Democratic Committee, about a political contest for a United States Senatorship, that the Mayor wishes to inform Mr. Ernst about it, and therefore that I will withdraw the objection; is that it?

THE COURT: I believe the Mayor has so indicated.

MR. MATTHEWS: Now, go to town with the baby.

THE WITNESS: Mr. Ernst asked me——

Q. Just let me give you the question, so we don't have a speech, just a simple question.

A. Yes.

Q. Do you repudiate the support of the United Mine Workers of America in Kentucky at the present time in behalf of the election of Senator Barclay on the ground that they are undesirables?

A. If the United Mine Workers of Kentucky is associated with the Reds and part and parcel of the Communist group, Senator Barclay should denounce and refuse to accept any support whatsoever.

Q. All right.

A. Because for that he would obtain thousands and thousands of Americans that would march to the polls in his support.

Q. All right. Now, Mayor, I want the stenographer to read my question; see if you can answer my question.

(Pending question read by the reporter.)

MR. MATTHEWS: He has answered that question, if your Honor pleases.

Q. Do you——

MR. MATTHEWS: He has nothing to do with Senator Barclay's campaign.

Q. I say do you as vice-chairman of the National Democratic Committee?

MR. ERNST: And he answered me, your Honor, and said that Senator Barclay should do so and so.

MR. MATTHEWS: That's right.

MR. ERNST: I want to know what this man does, in relation to his use of the word "undesirables."

MR. MATTHEWS: He has nothing to do——

THE WITNESS: Well, I have denounced them; I said to you, and in your presence, that I want nothing to do with your labor party here.

Q. I didn't ask you that, sir.
A. Well, it is the same——

MR. ERNST: Will you read the question to the Mayor, please?

(Pending question read by the reporter.)

MR. MATTHEWS: Now, if your Honor pleases, this man has said Senator Barclay should denounce them. He has no right to repudiate or anything else. He is not running Barclay's campaign. Maybe Ernst is.

THE WITNESS: I did answer it. Why don't you read my answer.

Q. Well, your answer, sir——

MR. ERNST: Read the answer. Let's get the Mayor cleared up on it.

Q. I want your statement, not what you think Barclay said.
A. I will give you my judgment, Counsellor.
Q. All right.
A. Don't worry about that.

THE COURT: I think the record ought to show that we are not familiar with the facts in Kentucky.

MR. MATTHEWS: Yes.

THE COURT: I mean it ought to be shown.

MR. MATTHEWS: If the Mayor wanted to talk politics——

MR. ERNST: No, no; the Mayor knows exactly what I am talking about.

MR. HERSHENSTEIN: He has given you what you want.

MR. ERNST: Will you read the Mayor's answer, where he referred to Americans, please?

(Answer read by the reported as requested.)

Q. Now, Mayor, let's start over and see whether I can make it clear to you. I don't want an answer with "ifs" in it. That's why I asked you first, whether you knew that the United Mine Workers were a part of the CIO. You say yes, do you?

A. (The witness nods.)

Q. Do you mind saying "yes" instead of nodding your head.

A. Yes, Counselor.

Q. Then I asked you, you have said that the CIO were undesirables, is that right?

A. Well, now, just a minute.

Q. Well, let's have it.

A. Wait a minute. I qualified myself, yesterday.

Q. Now, how did you qualify yourself, yesterday?

A. On the CIO rank and file.

Q. Yes.

A. I said clearly, very clear, and you heard me——

Q. That's right——

A. —that there was thousands and thousands of members of the CIO that was absolutely unaware of what was going on.

Q. That is right.

A. And that was forced in, forced in, to join because of fear and violence, and that the leaders was deceiving them.

Q. All right. And the leaders are undesirable?

A. Well, the records I examined show that they are, to me.

Q. To you?

A. That they are Reds.

Q. That's all I can ask; they are to you.

THE COURT: Mr. Ernst, have you got in the record a list of the leaders of the CIO, officially?

MR. ERNST: No. We can supply it, if it is wanted.

THE COURT: Is there an official list?

MR. ERNST: No, there is no one published list, but we can get it.

MR. MATTHEWS: Well, that's what we have subpœnaed.

THE COURT: Oh, that's what I thought.

MR. MATTHEWS: We will have it for you, Judge.

Q. Now, Mayor, let's go further, and I ask you, since the United Mine Workers is a part of the CIO, do you as vice-chairman of the National Democratic Committee, repudiate the support of the leaders of the United Mine Workers of America in behalf of the election of Senator Barclay on the ground that those leaders are undesirable?

MR. MATTHEWS: Now, if your Honor please, that question is no question to ask in this cause at all. First of all, it presupposes that as vice-chairman of the National Democratic Committee he knows that Barclay is running for Senator and that he has charge of his campaign.

MR. ERNST: The mayor wanted to answer it, your Honor.

THE WITNESS: No, no, wait. My answer is in there on the other question. It is the same question.

Q. It is the same what?
A. It is the same question that you ansked me.
Q. Would you mind answering my question?
A. My answer is in the other question.
Q. No, but your answer, Mayor, was if certain things happened, you see, and I don't want any misunderstandings; I want it definitely.

A. Senator Barclay—if he was familiar with the conditions, located in Kentucky, as I am with them here——

Q. Yes.

A. —he would repudiate them.

Q. He would?

A. Certainly.

Q. All right. And you as a member of the National——

A. How could he be an American and accept any such report as located in this state?

Q. And that's your feeling as a member of the National——

A. In this state, yes. I would repudiate them, and I have.

Q. Is that also your feeling as a member of the National Democratic Committee?

A. No.

MR. MATTHEWS: I object to that, if your Honor please.

A. (Continuing.) As an individual and as the head of the party of this state I repudiate them.

Q. All right. Now, Mayor, are you aware of the fact that in the last presidential election there were at least twelve electors in New York State of members and officials of the American Labor Party——

MR. MATTHEWS: I object.

Q. (Continuing.) —which electors were the electors for Franklin D. Roosevelt for president and which electors from the American Labor Party of your so-called undesirables included none other than David Dupinski, the head of one of the important CIO unions? Are you aware of that fact?

A. I read of the expose of David Dupinski—I read in the papers where they exposed him as a Communist.

Q. You are aware of that, are you?

A. Yes, yes.

Q. Now, do you want to repudiate that kind of support?

A. Yes.

Q. All right. Now, Mayor, out in Detroit, or in Michigan, Frank Murphy, a good friend of yours, and mine, I assume——

MR. MATTHEWS: Well, as to that we have no knowledge, that Frank Murphy is a good friend of yours.

Q. (Continuing.) Frank Murphy, running for governor, is having the support of the United Automobile Workers, a CIO union?

A. That's before, Counselor.

Q. Now, right now, re-election.

A. Oh, I am talking of his——

Q. No, I am talking of right now, this minute; and Homer Martin, the head of that CIO union, is offering his support to Frank Murphy, and is your answer the same, that Frank Murphy should repudiate the support of the 200,000 workers in the United Automobile Workers, part of the CIO?

MR. MATTHEWS: Just a minute, just a minute. Just a minute, Mr. Mayor. Mr. Mayor, you know that only yesterday Martin exposed and fired out three Communists in the CIO.

MR. HERSHENSTEIN: Five.

MR. MATTHEWS: Five Communists in the CIO, the Prince of Pilsen today, so I object to that question.

MR. ERNST: May I——

MR. MATTHEWS: Just a minute, just a minute. I object to that question, if your Honor pleases, because it is irrelevant to this issue what Frank Murphy does.

Q. Do you want to answer my question?

MR. MATTHEWS: I hope Frank is elected. He is a brother alumnus in Fordham of mine.

MR. ERNST: He is a guest of mine in Nantucket once a year.

MR. MATTHEWS: Oh, so you go to Nantucket, eh?

Q. Mayor, do you want to answer my question?

MR. MATTHEWS: I didn't know you could go to Nantucket.

Q. Do you want to answer my question, Mayor?
A. It is up to the counsel. I don't know.

MR. MATTHEWS: Objected to as irrelevant.

THE COURT: In this case, do you overrule your counsel or not?

MR. MATTHEWS: No, he hasn't done that. I don't think, with all respect, Judge Clark, that that is a fair remark.

THE WITNESS: I hope the counsel don't embarrass me with objecting, because I don't feel that there is anything——

Q. There is nothing——
A. (Continuing.) That I care——
Q. To hide?
A. To object to, but if the counsel insists——

MR. MATTHEWS: I object to this, and you don't answer it until I tell the Court. I am your boss on that stand, and don't you forget it.

Now, I object to the question as irrelevant, what happens in Michigan or in Frank Murphy's bailiwick.

MR. ERNST: May I argue to that a moment, your Honor?

THE COURT: Well, of course I must say that I don't know the conditions there.

MR. ERNST: No, it is unimportant, the conditions, your Honor. Let me tell you my point. This man, in order, as we see this record, to deprive people of what

we deem to be their basic rights under the bill of rights——

MR. MATTHEWS: I object and ask that be stricken out.

MR. ERNST: Let me finish my argument.

MR. MATTHEWS: Those remarks about this witness are unfair. He is back on the wagon, he is peddling again.

MR. ERNST: If your Honor please, can I speak uninterrupted?

MR. MATTHEWS: Well, I object to that statement on the record. That isn't a statement of a lawyer cross-examining a witness and offering an objection. That's just peddling.

MR. ERNST: If your Honor please, this man in order to predicate a theory on which he can deny, as we see it, the civil liberties, which we think we have proven were denied, in the record, it is for you to decide whether they were or not, has used various words, such as "undesirable," "offensive" and vague words that have different meanings to different people. They could even have different meanings to the same person at different times. It is important that we get to the real significance of those words in his mind, to know who in the future will be the "undesirables," who in the future may offend, as he uses those words of the English language.

THE COURT: I think the question——

MR. ERNST: Now, if your Honor please, he takes these people and he says they are undesirables, to the extent that they cannot speak in Jersey City, and are subject to other deprivations of civil liberties, but I want to find out whether he is consistent, and——

THE COURT: I think, Mr. Ernst——

MR. ERNST: But his counsel says he can't answer whether he is consistent in Michigan.

THE COURT: I think the question should be framed in such a way that if he were in place of Governor Murphy, though——

MR. MATTHEWS: That is the idea.

THE COURT: Or Senator Barclay.

MR. ERNST: He will say "I can't imagine myself being Governor of Michigan."

MR. MATTHEWS: No, he won't say anything of that kind.

MR. ERNST: And that kind of nonsense.

MR. MATTHEWS: He would say "I can't imagine myself being governor of Michigan at the instance of murders and burglars and thieves and rioters," that's what he will say.

THE COURT: Reframe your question.

Q. We will take the question that way, Mayor. If you were the Governor of Michigan, now, running for re-election, would you repudiate the support of the United Mine Workers of America, a part of the CIO, on the ground that they were what you termed "undesirables"?

MR. MATTHEWS: Now, if your Honor please, I object to that question as irrelevant to the issue, but I object to it further, because he has not given the mayor what he termed as "undesirables." The mayor has said those who are guilty of rioting, bloodshed and disorder. Of course, we would repudiate those.

MR. ERNST: On the ground, Mayor, may I correct it to read——

Q. On the ground of what you deem to be undesirable?

MR. MATTHEWS: No, unless you tell him what it is.

MR. ERNST: I will have to read it out of the record.

MR. MATTHEWS: Well, read it out of the record.

MR. ERNST: I don't intend to.

Q. Mayor, will you answer the question, or do you want to abide by the advice of counsel?

MR. MATTHEWS: Never mind about that bunk about "abiding by the advice of counsel." Let the Court rule on that.

MR. ERNST: No, I withdraw the question.

MR. MATTHEWS: I object.

MR. ERNST: I withdraw the question, if he wants not to answer it on account of you.

MR. MATTHEWS: All right, that's very generous of you.

Q. Do you want me to withdraw the question?

MR. MATTHEWS: Sure, do it, and don't waste any more time.

Q. Mayor, would you prefer I withdraw the question, or do you want to answer it?

MR. MATTHEWS: Just a minute. Don't fall for that bunk.

THE WITNESS: May I address you.

THE COURT: The Mayor wants to talk you.

MR. MATTHEWS: Oh, all right.

THE WITNESS: I mean may I address you just publicly?

MR. MATTHEWS: Certainly, go ahead.

THE WITNESS: I don't want it to appear that I am making allegations against anyone, and that if I was

in similar circumstances, that I would double deal, or would take a different position. I have no hesitancy in answering these questions, Counselor.

MR. MATTHEWS: Don't fall for that.

THE WITNESS: If you object, I of course will refrain from answering the question.

MR. MATTHEWS: I object, and you refrain.

THE COURT: The question is withdrawn, I think.

MR. ERNST: The question is withdrawn under the circumstances.

MR. MATTHEWS: Not under the circumstances but because I object.

MR. ERNST: The question is not withdrawn because of the objection, because I didn't get a ruling. It is withdrawn out of deference to the Mayor's position under the circumstances of his last statement, that's all.

MR. MATTHEWS: That's too funny for words!

Q. Now, Mayor, I would like to ask you this: did you also repudiate for the same reasons the acceptance of contributions for the purposes of the Democratic Party, from the American Labor Party?

MR. MATTHEWS: I object.

Q. (Continuing.) Financial contributions?

MR. MATTHEWS: I object as irrelevant to this issue.

Q. (Continuing.) On the ground that the leaders of the American Party are what you described yesterday in general terms as "Undesirable."

MR. MATTHEWS: Do you want to answer that? All right, you may answer it as far as I am concerned.

A. Will you repeat—you are talking about the acceptance of contributions?

Q. Yes, financial contributions to the Democratic organization.

A. It entirely depends, Counselor. If the purpose of the American—of the CIO—or the American Labor Party, was to endeavor to control or to apply influences upon the general Democratic Party, I would reject the contribution.

Q. Yes. But under the circumstances today, would you reject or not?

A. I would reject.

Q. You would reject?

A. I would.

Q. Now, would you also reject any contributions from the CIO, made to the Democratic National Committee, or any part of the committee, in which you had any voice?

MR. MATTHEWS: I object unless the Mayor wants to answer the question himself.

THE WITNESS: I would prefer to.

MR. MATTHEWS: All right, go ahead.

Q. All right.

A. Upon the reputation that has followed the CIO in various states and the confidence, the loss of confidence that the people has got in the CIO in America, I would reject them, because I think—because I feel it would be destructive to the party.

Q. And that applies also——

A. Other leaders differ with me.

Q. That's right. I am just getting your viewpoint.

A. I am talking about in this state.

Q. That's right.

A. I would reject them.

Q. Yes. And you would take the same——

A. I have no other power, other than here.

Q. No. But insofar as you would have a voice or a vote, as a member of the National Democratic Committee, you would take a consistent position there, wouldn't you?

A. I certainly would.

Q. Now, Mayor, that also applies to all of the underlying unions of the CIO, doesn't it? You wouldn't take any money——

MR. MATTHEWS: I object.

Q. (Continuing.) Nationally or locally?

THE COURT: I think the "underlying" is too broad.

MR. MATTHEWS: Yes.

MR. ERNST: Well, I will list some of them.

Q. The steel workers, the automobile workers, the rubber workers, for example, to start with; you wouldn't take any contributions from them?

A. Well, Counselor, I wouldn't to be consistent because I am opposed to their policies and their methods.

Q. That's right, you wouldn't take it from any of the unions either?

A. Well, I couldn't take it.

Q. That's right.

A. Because I couldn't agree—I don't agree with them.

Q. I respect your consistency, sir.

MR. MATTHEWS: Well, he doesn't care whether you do or not.

Q. Mayor, do you believe that peaceful picketing, peaceful picketing, should be allowed in Jersey City?

A. Peaceful picketing is permissible in Jersey City, Counselor.

Q. Is it permitted so far as you know in all cases of all strikes, where people want to picket?

MR. MATTHEWS: Just a minute.

Q. (Continuing.) Or are there strikes where you do not allow peaceful picketing?

MR. MATTHEWS: I object. That's not the issue in this cause, if your Honor please. Picketing isn't in

this cause. I don't know why we allow this man to roam around like this.

MR. ERNST: This man, your Honor, roams here because in our bill we claim that the Jersey City officials were interfering with organizational activities of unions.

THE COURT: Commissioner Casey testified at some length on this subject, Mr. Matthews.

MR. MATTHEWS: I remember; Commissioner Casey is head of the police department.

THE COURT: So I will permit the Mayor to answer.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Do you want the question read again or do you remember it, Mayor?

A. Well, I understand your question, in peaceful picketing, I interpret peaceful picketing that it means the authorities should regulate picketing, that is, mass picketing is not permitted.

Q. Right.

A. That is not peaceful picketing. In all labor controversies and all disputes the head of the police department or his deputies generally deems it advisable to wait upon the heads of the industries and wait upon the men who is involved in the strike and they always work out a peaceful method of picketing, a method of locating their headquarters, whereby they can be in constant touch with surroundings and conditions, and they generally allow from two to three to picket, they oppose the carrying of banners, they oppose mass picketing. The purpose of that is to try to open up negotiations immediately to adjust their differences. That is what our picketing system and method

in Jersey Ctiy is. In other cities they have various methods. We have been very successful in Jersey City with our method.

Q. Do you allow people to picket in front of a plant where the people who are picketing have never worked in that plant previously?

A. No, we do not.

Q. Do you allow people to picket in front of a plant where the pickets happen to come from some place out of Jersey City?

A. No, we do not. We think that is very injurious and very bad for the cause.

Q. Don't waste time about what you think; I just want to have some facts, very simple and brief.

THE COURT: I think you meant to add, or didn't you, Mr. Ernst, to that last question "who come from outside Jersey City and do not work in the plant," or don't you?

Q. That is what you meant and I meant. Right?

A. Yes.

Q. Now, do you always allow people to picket outside of a plant or do you not at times make them picket a block away?

A. Oh, no, right in front of the plant, Mr. Ernst. From time to time we communicate, the police officer in charge is always communicating with the head of that group, and asking if there are any objections, are there any complaints or any criticism so that he can convey to his superior that there is a feeling of discontent that they are not being treated fairly. We never have any trouble with strikes.

Q. The evidence will show that. Do you allow picketing in front of a plant for the purpose of organizing the workers in the plant—by that I mean to induce the workers to join a particular union?

A. No, we do not allow that because we feel they are intruders.

Q. Have you ever read the National Labor Relations Act?

A. No. The Wagner Act?

Q. The Wagner Act?

A. No, other than——

Q. Have you ever gotten an opinion——

MR. HERSHENSTEIN: He hasn't finished.

A. (Continuing.) —other than has been in the papers from time to time; I see various phases of it discussed by various judges and boards, that's all.

THE COURT: We will adjourn now for ten minutes.

(A ten-minute recess was here taken.)

Q. Mayor, may people strike and picket for a closed shop?

A. No, we have none of that.

Q. Who decides in each case whether or not the people may picket, that is, whether it is a closed shop strike or an organizational strike or not, who decides that?

A. Generally the delegates of the union do their negotiating themselves with the various shops and various industries. They never create or never endeavor to present themselves publicly on the street to threaten or to urge by force the joining of their union, they have no trouble with our city in that respect; I haven't seen any, any closed shops where there is no strike, where there is no labor controversies, for anyone to present themselves and to picket for that purpose to force them into the union. We have never had that.

MR. ERNST: Now, will the stenographer please read my question to the Mayor.

(Question repeated as follows:

"Who decides in each case whether or not the people may picket, that is, whether it is a closed shop strike or an organizational strike or not, who decides that?")

A. Well, we have made it a rule because of our state law, there is a Court of Errors and Appeals case recently, that where there is no strike picketing is prohibited.

Q. Mayor, I am going to ask the secretary to read it once more to the Mayor. If it isn't clear I will make it clear.

(Question re-read by the reporter.)

A. The police authorities because it is unlawful.

Q. The police authorities. When you say the police authorities is that the policeman on the beat?

A. The Chief of Police.

Q. So in each case, Mayor, the Chief of Police decides whether or not a picket line may be on the street?

A. That is naturally, if the case is brought before him by the plaintiff or by the operator of the plant, and then he immediately steps into the picture and it is his duty.

Q. Now, in the first instance, however, the policeman on the beat may break up the picket line if he thinks it is an organizational picket line or a picket line for a closed shop or any one of the picket lines that you think is illegal?

MR. MATTHEWS: He hasn't said that at all. He says the Police Chief after a complaint from people.

THE COURT: Put it in the form of a question. Maybe it was in the form of a question. It didn't sound quite like a question.

Q. There is a picket line in front of a factory, it is peaceful, there are just three men, a policeman comes along the street and he sees three men picketing in front of a factory, he has never seen them in front of that factory before; is it up to that policeman to decide whether or not that picket line is lawful or not?

A. No, the rules of the department, Counselor, is that that officer the moment he observes any strangers or any condition out of the ordinary, he makes his investigation and if he finds that they are in violation of the law he orders

them to move on and reports to his station just what happened.

Q. And if the policeman perchance disturb picket lines that are lawful that should be stopped, shouldn't it?

A. Well, they never interfere with picket lines that is lawful.

Q. Never do?

A. Not where there is a strike.

Q. But if by chance they make mistakes and interfere with lawful picket lines you would suggest in behalf of labor, of which you are a friend, that that practice should stop, is that right?

A. It doesn't exist, Counselor.

Q. It doesn't. But if it did exist you would want to stop it?

A. Well, we have to stop it.

Q. Now, in regard to the National Labor Relations Act, the Wagner Act, did you ever get an opinion from any of your counsel as to what rights that gave the workers in Jersey City?

A. No, we never had an occasion to call upon it.

Q. Do you know whether or not in that Act there are some rights given to the workers in respect to organizational activities that they didn't have before?

A. Activity?

Q. Organizational activities.

A. I understand that's the way the Act is drawn.

Q. And the workers have some additional rights. Now, in regard to the workers using placards, I want to ask you a series of questions all relating to placards. Do I understand from you that if the men on the picket line have circulars and hand them out without molestation to the workers coming out of the picketed plant, that is now lawful?

MR. MATTHEWS: Since the decision.

A. That was unlawful.

Q. Now lawful, I said.

A. Yes, yes.

Q. I also understand, do I not,—or let me put it this way: Do you agree with me that if a picket line is in existence and it is one of the picket lines that you believe lawful and the pickets then instead of having a circular on a small piece of paper have it printed on a big piece of paper, not cardboard, let's say 10 by 20, and just hold the paper in the air, that is unlawful?

A. As far as our ordinance is concerned, yes, sir.

Q. It doesn't make much sense, that distinction, does it?

A. No, it doesn't. They don't benefit anything by that. The strike is always handled from inside with the men on strike and the officials of the industry.

Q. Now, the men could take their circulars and have them sewn or pinned on the back of their shrits while they are walking up and down picketing and that would be lawful, would it?

A. Not under this ordinance.

Q. And have you been advised by your counsel that that ordinance is constitutional?

A. Well, of course, I don't feel that anybody could tell me that it is constitutional or unconstiutional because Mr. Hershenstein and Mr. O'Mara drew that ordinance and I have the utmost confidence in them as to their ability.

Q. Yes, but don't you think that in view of the United States Supreme Court decision in regard to the distribution of placards, which is another word for circulars, that there is a real doubt as to whether or not the position in Jersey City against placards on the picket line is at present the right position to take?

MR. MATTHEWS: Now, if your Honor please, he is not called upon to construe the opinion of the United States Supreme Court or the Wagner Act.

THE COURT: Are there any cases, Mr. Ernst—I meant to ask this the other day—are there any cases passing on the right of pickets to have placards?

THE WITNESS: Yes, in the Massachusetts case.

MR. ERNST: In most of the jurisdictions, your Honor——

THE WITNESS: The Massachusetts case clearly covers that in the United States Supreme Court.

MR. ERNST: In most of the jurisdictions with which I am familiar the courts have held that the pickets may carry placards and the law, as I understand it, does not go into the question of what is on the placard. I would like to ask the Mayor one or two questions, if I may, on that.

THE COURT: What is it in reference to, the Massachusetts case, Mr. Hamill, do you know, that the Mayor speaks of?

MR. HAMILL: Our Courts of Chancery, your Honor please, have observed that ordinance.

THE COURT: Do you know the name of it?

THE WITNESS: Mr. Hershenstein and Mr. O'Mara have got that Massachusetts case.

THE COURT: What is the name of it?

MR. HERSHENSTEIN: I can give it to you in the morning; it is cited in the Fifth Avenue Bus case of New York City.

MR. ERNST: The Davis case is a case involving the right of public assemblage, of which the citation—I don't believe it has any reference whatsoever to placards but I can give you the citation in a moment—Davis v. Massachusetts, 167 U. S. 43, decided by the United States Supreme Court by Mr. Justice White in 1897. I don't recall any reference there to placards whatsoever.

Q. May I ask you this in regard to the placard carrying, does it make a difference in your mind as to what is written on the placard?

A. No; of course, we have always maintained, Counselor, that the carrying of placards is very injurious to a man's business and that for them to assemble in front of a business house, for instance, a store, passing up and down in front, it destroys the man's business, so we endeavor to try to adjust that, that his business wouldn't be destroyed, because of some little dispute.

Q. Now, you would make a distinction in a retail business and a manufacturing business maybe, wouldn't you, you wouldn't destroy the manufacturer's business?

A. No, I don't think we could make a distinction in either.

Q. Wouldn't allow it at either?

A. I think not.

Q. Now, there were placards used at the celebrations in Veteran Square, Journal Square?

A. Well, I wouldn't call them placards; those are transparencies carried by these various civic groups, Counselor; I wouldn't call them placards.

Q. Well, now, would you allow people on a picket line to carry a transparency?

A. No, there is no comparison, Counselor.

Q. Your answer is no, you wouldn't let them?

A. Well, no, no—yes, that is my answer, but there is no comparison.

Q. You wouldn't let them carry them and you don't issue permits to the civic groups, as you call them, to carry the placards, do you?

A. No. Where there is a public demonstration or there is parades permission is granted for parades, they are privileged to conduct their parade and their demonstration as they see fit. As a rule there is nothing undesirable about it. We have never found any.

Q. Mayor, I was impressed by what I think is your genuine resentment against the sweatshop conditions, to which allusion was made. Now I ask you what if those sweated girls picketed up and down in front of that plant, do you still think you should deny them the right of carry-

ing a placard saying "This factory is on strike because of sweatshop conditions?"

A. We should go further, counsel, I don't agree with that, but we should go further and drive them out, we should close them.

Q. Now, Mayor, let's see. Who is to do the driving out and how would you drive them out?

A. Well, now, I communicated with the American Federation of Labor of which my counsel has my letter——

Q. It is in the record, no answer.

A. (Continuing.) —and I endeavored to try to see if we couldn't enact some state law or some ordinance that would cure that condition under some health regulation of some character. I even went further, I sent for the Commissioner of Labor and I discussed with him whether or not he could not close sweatshops and drive them out of our state, and from his record he has done quite a little of that.

Q. Mayor——

A. They are very undesirable.

Q. They are to the city and everybody.

A. Everybody.

Q. Now, Mayor, don't you think that the working people themselves by gathering together in unions can be of some aid in boosting these low wages?

A. Yes, they have been, they have done considerable good; I don't oppose that, Counselor.

Q. Isn't one of their implements in aid of your position to drive out the sweatshop people, the conducting of picket lines and getting a strong union?

A. No, I think that the greatest remedy for that is simply let the authorities learn in some manner lawfully and closing those shops. Now, I welcome today, and I am not responsible for these various small groups moving into Jersey City—I doubt whether there is any number of them there, maybe a few, and they locate on the waterfront where we can't get at them. Now, our stores, we don't allow any of our stores to be utilized for that because we have supervision over that by our health ordinance because

they haven't got the necessary facilities for the housing of these people. There we drive them out in that respect. Now we take a tenement house, they go up on a floor, we drive them out of there because the facilities is not there for the housing of those shops, because they want to house fifty or sixty or a hundred people and we don't allow that.

Q. Mayor, don't you really think that you could do a swell job driving out the sweatshops if you allowed these sweatshop girls to have picket lines in order to organize the shops even though the shops are not organized now?

A. That would lead to disturbance, Counselor, they would not accomplish it. I even went so far as to write to some man in New York at the head,—he has had considerable trouble, he is the head of that union,—and I asked him would he supply me with any data that he possibly had in his controversy to eliminate sweatshops and he sent me over some memorandums but we wasn't successful in getting that together.

Q. Do you know the name of the man?

A. Counselor Hershenstein was the man drawing the ordinance for me. We have endeavored for the last two years, we started a battle on those sweatshops, Mr. Greer, who is the City Comptroller, who has supervision of this publicity campaign, has always impressed on every man that has ever entered Jersey City in his efforts to locate "We don't want you if you are a sweatshop and if you don't pay the proper wages, if your working conditions is not proper, get out, we don't want you, don't look for any protection from us."

Q. It is a tough job though.

A. It is a tough job to keep them out because they are squirming in in every direction on you.

Q. Now, Mayor, you said that if you allowed these sweated girls of Jersey City to have a picket line for the purpose of organizing a shop that is not organized you were afraid, as I recall your words, there would be disturbance or disorder?

A. Well, it would open up the door, Counselor.

Q. Will you explain to me what kind of disturbance or disorder you mean?

A. Well, it would open up the door that it would have to be permissible to every other industry and every other line because if you grant to any particular set of people the right to picket and the right to mass picket in order to cure one evil you are going to create another. That is what we are disturbed about, and I want to say to you for the benefit of those who is opposed to sweatshops, I would like to get some state law, if anybody can draw one, that will stand the test of our courts, I would like to get that through.

Q. Now, until you get through a state law that stands up in court these girls are going to be sweated and there is no possibility of having the strength of a trade union have the impact on a boss to raise the wage.

A. Counsel, I won't agree with you that they are in Jersey City; they are not.

Q. You don't believe there are any in Jersey City?

A. Maybe two or three. I say to you if you are so anxious to cure it why don't you cure that in New York?

Q. Well, now, maybe we are trying to do things with it in New York also.

A. Well, I say if you had as few in New York as we have you wouldn't consider it, but I am opposed to it. I would go further than picketing; if they complain to me I will go further than picketing.

Q. What would you do besides picketing?

A. Do anything that is possible to force out of that city the undesirable shops that is forcing people to work for starvation wages.

Q. Now, you will go further than picketing but you won't allow the picketing.

A. Well, the picketing doesn't accomplish nothing, Counselor.

Q. Now, let me ask you this, Mayor. You are afraid if you allowed picketing to organize these sweatshops there would be disorder.

A. It is unlawful, Counselor.

Q. No, you said before something about disorder or disturbance.

A. It is unlawful; we have no right to do that.

MR. MATTHEWS: I was waiting for him to say that.

A. If you will get an opinion only a week ago you will find it is unlawful.

Q. Just stick to the one thing, the disturbance, and we will come to the unlawful later.

A. Why discuss with me something I have no power over or no control?

Q. Because you used the word, Mayor.

A. I didn't use it, you used it. You continued to interrogate me along those lines and if you will examine this act, Counselor, I have no power under the law to do this.

MR. ERNST: The secretary will kindly look back to the point where the Mayor said that if he allowed picketing there would be disorder, that is, picketing of the sweatshops for organizational purposes.

MR. MATTHEWS: He doesn't dispute that he said that, but he is also saying he cannot do it under the law.

A. You asked about picketing where there is no strike, Counselor.

MR. ERNST: I would like the stenographer to read back that question and answer because I want to ask you what disorder you fear. It will take a few minutes to get it, but let's have it read.

(The reporter reread the question as follows:

"Now, Mayor, you said that if you allowed these sweated girls of Jersey City to have a picket line for the purpose of organizing a shop that is not organized you were afraid, as I recall your words, there would be disturbance or disorder.")

Q. You mentioned the word "disorder," Mayor. Will you kindly tell me what kind of disorder you would fear if that kind of picketing of sweatshops were permitted?

A. In the first place, Counselor, why should you and I discuss something that I have no power or control over? Further, I want to refer you again to a recent act of the Court of Appeals that denies the right to allow anybody to picket where there is no labor dispute.

Q. We will come to that in a moment.

A. No, no, we won't come to it. Why discuss it with me, Counselor, and try to put me on record on some question we have no legal right?

Q. We will get to the legal right in a minute. You mentioned the word "disorder."

A. I am mentioning legal rights too.

Q. Now I want you to tell me what you mean by disorder. I will tell you frankly that under the National Labor Relations Act there is no case in the State court that will cover all the situations.

MR. MATTHEWS: I will tell you there is.

THE COURT: All the situations defined in the Act.

MR. MATTHEWS: I will tell you there is, so you follow me.

Q. Now, what is the disorder that you fear if you allowed the sweatshop girls to picket, what kind of disorder?

A. I have no hesitancy in discussing these questions with you.

Q. Let's have it.

A. Because I am familiar with them, been handling them for years, the disorder from picketing. In the first place we have no right to picket; second, if we grant any picketing, particularly where it is unlawful, we must grant them in every other section of our city, which finally winds up in disorder. That is exactly what I refer to. Where one place may not develop disorder the other would.

Q. Now, disorder means what?

A. Nuisances, nuisances.

Q. You mean that the people on the streets cannot go by the picket line?

A. Yes, and they attract crowds and it gets noisy and it gets a little troublesome.

Q. But picket lines are allowed for many purposes, aren't they?

A. In some States and some cities.

Q. In Jersey City?

A. They are allowed there, yes.

Q. So that you have some of that disturbance in certain picket lines and just don't want more of it?

A. No, we won't have any disturbance, Counselor.

Q. Then I don't understand you, honestly.

MR. MATTHEWS: He can't help that.

A. As I discussed with you, we adjust all our affairs and we decide that two or three men is to picket the entrance to the building and two or three on the side and two or three in the back and we never have disturbances with two or three men, we never have disturbances only where there is a dozen or two or three dozen or fifty or sixty wants to mass picket.

Q. So if you state to these sweatshop girls "You can picket, two or three or a half dozen," you wouldn't expect any disturbance, would you?

A. Not necessarily, but it is unlawful.

Q. And if it were lawful you would be in favor of it?

A. Well, I think I would go further than that.

Q. No, let's just go that far first.

A. Well, I would go further, I would try to inject the authorities of Jersey City in to cure it.

Q. Would you go that far as to allow picketing if it were lawful?

A. If it was lawful?

Q. You would be in favor of it?

A. Why, certainly, anything that has been effective to an individual worker.

Q. So if the law were changed you would be delighted on that subject, on picketing the sweatshops?

A. Are you discussing now, Counselor, when you refer to the sweatshop, are you referring to the place of business that has no labor dispute and no strike?

Q. That's right.

A. And that you think it is lawful for them to walk up there and picket that place of business that haven't any labor disputes or labor difficulties?

Q. That's right, Mayor.

A. Is that in your opinion lawful?

Q. That's right, Mayor.

A. Is lawful?

MR. MATTHEWS: No, your counsel advises you contrarily, it is not.

Q. Now, Mayor, let's not argue between us what is legal.

A. I can't argue law with you; I am not trying to.

Q. No, let's put it this way: The purpose of picketing is to persuade people, isn't it?

A. Yes.

Q. The result of peaceful picketing is to persuade some human beings who are picketed to take a certain position in their own minds with respect to joining an organization, right?

A. Right.

Q. As long as there is no violence and it is peaceful what objection have you got to peaceful picketing to persuade?

Q. That has never confronted the City of Jersey City yet, as long as I have been in control, and the head of the city government. In the first place, what you are discussing today, Counselor, the sweatshop is located on the riverfront, it is on railroad property. There is no——

Q. That's right.

A. There is no picketing allowed there and there will be no picketing permitted there because it is on private property, and the result is that we will never be confronted with that. I told you that we do not permit sweatshops in homes or places of business, stores, vacant stores, and that is the only possible chance that we would ever be confronted with sweatshops, and the result is that we have never been confronted with one yet. You are referring to those that has been located from Brooklyn there and they are on private property. We have no jurisdiction over that property, so we cannot remedy it by discussing it here, but that is the case.

Q. No, but this is true, isn't it, Mayor, that when the people come off the private property they get into your public highways?

A. On the streets.

Q. On the streets?

A. Yes.

Q. And then at that point you can regulate the right to picket?

A. No.

Q. So as to approach them when they come off the private property?

A. These properties is different, Counsellor. They go from there on to the ferry boats.

Q. Yes.

A. You see?

Q. And they cross the public street, don't they?

A. No, no; no, they never leave——

Q. All private property?

A. They never leave it.

Q. Now, if they are not going on a ferry boat and they live in Jersey City——

A. They don't live in Jersey City.

Q. None of them do?

A. None of them.

MR. ERNST: Didn't they testify they did?

THE WITNESS: Not to my knowledge. They all come from Brooklyn and New York.

(Counsel conferred aside.)

Q. Mayor, I am advised that three or four girls, maybe some more, testified as to sweat shop conditions in Jersey City, and all of them gave their addresses as living in Jersey City, is that right?

MR. MATTHEWS: At the time that they were on the stand, but not at the time that they were working in the sweat shops.

MR. FRAZER: I think there is some confusion there, because the plants, a number of the plants we spoke about, were not in the Harborside Building; they were on some other street, the name of which I now forget.

MR. MATTHEWS: There was one on Orient Street, Spaulding, that I remember.

MR. FRAZER: Somewhere in the harbor side.

Q. Let me end this subject; it isn't worth much more time at the moment. As I understand it, even where there are sweat shop conditions in a factory, you are opposed to allowing union organizers to picket in order to induce the sweat shop girls to join the union?

MR. MATTHEWS: I object to that question, if your Honor please.

A. No——

MR. MATTHEWS: He has already said that the law won't allow it. Now why can't he be opposed to the law?

THE COURT: I don't know whether it is quite the same question.

A. Why can't this apply to every business, as well as a sweatshop?

Q. Yes. Well, is it all businesses?

A. Well, wouldn't that apply to every business?

Q. That's right. I meant even where it is a sweat shop.

A. No, I say wouldn't that apply to every business?

Q. Yes, I think it should.

A. Then we are opposed to that.

Q. We are opposed to each other on that?

A. Because I think that any business that has no labor troubles or labor disputes should not be allowed to be driven out of business because of some racketeering groups, and you know what I mean by that, Counselor; you have had vast experience in New York on that; that is, at least you have learned of it, about the racket that's been going on for so many years all over the country about this mass picketing and adjusting their affairs. I don't want any of that in Jersey City.

Q. Mayor, do you know Hugh A. Kelly pretty well?

A. I beg your pardon?

Q. Do you know Hugh A. Kelly?

A. The secretary of the Governor?

Q. The Governor.

A. Yes, very well.

Q. You know him pretty well?

A. Very well.

Q. And you know with some intimacy——

A. What?

Q. You knew with some degree of intimacy the people whose names were read to you by Mr. Spaulding Frazer?

A. Not them all. I know some of them.

Q. You know some of them?

A. Hugh Kelly, I am very, very well acquainted with.

Q. You know most of the people who were at the Armory meeting where you spoke, sitting on the platform with you?

A. Oh, yes.

Q. You know most of the people sitting at the head table at the Chamber of Commerce meeting?

A. Yes, sir.

Q. You knew practically all of the people who spoke at those various meetings and rallies?

A. Yes, sir.

Q. Right? In your opinion are they law abiding citizens?

A. Yes, sir.

Q. You have never known any one of them, have you, to go out with a brickbat or a gun or commit an act of violence or disorder?

A. (No answer.)

Q. What?

A. You are joking, ain't you?

Q. No, it is out of the question, isn't it?

A. No, no; I never knew that.

Q. Of course. Not a one of them. Now, Mayor, Mr. Casey indicated in his testimony that the rejection of the applications for speaker's permits was due to the fear of disorder?

A. The fear——

Q. Of disorder?

A. (The witness nodded.)

Q. Is that right? There was no reason to fear disorder from those people whom I just referred to as sitting at the various speakers' tables and platforms?

A. No.

MR. MATTHEWS: That isn't what he testified. Those are not the ones that he testified he feared disorder from. It was Roger Baldwin and you and the rest.

MR. ERNST: I didn't say he did; I didn't say he did.

MR. MATTHEWS: All right.

MR. ERNST: The mayor can take care of himself, without prompting.

MR. MATTHEWS: He has done it pretty well.

MR. ERNST: Plenty, without prompting.

Q. Mayor——

MR. ERNST: Will you repeat my question for the mayor? I think he just shook his head.

(Pending question and answer read by the reporter.)

Q. Now those people have pretty wide influence among their own groups, haven't they, the veterans and the church groups and the others that came out?

A. Yes, sir.

Q. Is that right? They are more or less the leaders of public opinion in Jersey City?

A. Yes, sir.

Q. You called them such yourself, didn't you?

A. Yes, sir.

Q. Do you think they are really leaders, or did you just call them that?

A. Well, of course I look upon them from their positions and their wide acquaintances that they are leaders in their respective groups. They are outstanding, very outstanding.

Q. Now if, for example, Senator Borah had come in during either the months of November or December or January and had been granted a permit to speak on any street corner in Jersey City, do you fear that Hugh Kelly and the rest of those men would have created a disorder?

MR. MATTHEWS: I object, if your Honor please. Hugh Kelly has created no disorder.

MR. ERNST: I didn't say he had.

THE COURT: I don't think you quite understood the question.

MR. MATTHEWS: Well, I understand that that question is totally irrelevant to this issue. If Mr. Borah

came in under your auspices, which of course is contrary to even possibility, that would be a different proposition.

MR. ERNST: Will you repeat my question, please?

MR. MATTHEWS: I object to the question, please.

(Pending question read by the reporter.)

MR. MATTHEWS: Created a disorder—that's what I say. Hugh Kelly was not accused of creating any disorder.

THE COURT: Well, it bears on the issue, at least to my view, of whether there is a fear of disorder at public meetings.

MR. MATTHEWS: But he says—that question asks whether Hugh Kelly would create disorder.

THE COURT: As a result of Senator Borah's being there.

MR. MATTHEWS: Well, Hugh Kelly didn't create any disorder at any time.

MR. ERNST: I didn't say he did.

MR. MATTHEWS: And what is the sense of the question?

MR. ERNST: I don't think he would have, if I may tip off the mayor.

THE COURT: You may answer.

THE WITNESS: I don't think he would have created any disorder.

MR. MATTHEWS: That isn't tipping off the mayor. That's rendering yourself ridiculous.

THE COURT: Do you want the question read again, Mayor?

Q. Do you want to have it read again?

A. No, you asked me whether or not if Senator Borah had been granted permission, that the veterans and the various civic bodies would object? No, sir.

Q. They would not have?

A. No, sir.

Q. And there would have been no disorder on their part?

A. No, no. We would welcome Senator Borah there. We think that he is a high-class man, a high-class public official.

Q. Would you let Borah speak there if the application were filed by the American Civil Liberties Union?

A. Now of course we would first have to confront the Senator with the conditions and make known to him just exactly what the feeling of the people was against the group that was tendering him this invitation.

Q. That's right.

A. And if the Senator then thought that after he was acquainted with the conditions, Counselor—I don't think the Senator would accept it.

Q. But if he did accept, you would give him plenty of police protection?

A. If he accepted, we would be duty bound to protect him, but I don't think that the Senator would accept.

Q. And you have got a police department of about a thousand people?

A. Something in that neighborhood.

Q. And it would be ample to protect him?

A. (The witness nods.)

Q. And you don't think for a moment that Senator Borah would create a disturbance by what he said?

A. No, he is very——

Q. And you don't think he would come there with any kind of a pop gun?

A. No.

Q. Or an instrument of violence?

A. (No answer.)

Q. Right?

A. No, the Senator is—he is a distinguished statesman.

Q. That's right. Now, Mayor, if the Senator applies for a permit, as he did—I will withdraw the question.

Do you think that there would be a disturbance which you could not control——

A. Counselor, will you let me interrupt you? You said as he did, and then withdrew the question.

Q. Yes, I withdrew the question.

A. Well, he never did.

Q. That's right.

A. You see, you create an impression that he did.

Q. No, I withdrew that.

A. No, he did not.

Q. If the Whig Society of Princeton——

MR. MATTHEWS: The what?

Q. (Continuing.) The Whig, Cliosophic Society of Princeton University, had been granted a permit to put Senator Borah on a street corner to speak in Jersey City, and if Senator Borah had consented to speak and if the permit had been granted, would there have been such disorder that you could not have controlled it with your police?

MR. MATTHEWS: Oh, I object, if your Honor please. That's calling for a conclusion about something he can't even estimate.

THE COURT: I understood that it is the contention of the city authorities that they can estimate it. I might even say that they do——

MR. MATTHEWS: No, his contention was if his gang, the Civil Liberties Union, whose reputation in the Fish Committee is that of Communists—if they applied for Senator Borah, he would acquaint Senator Borah with the kind of cattle they are. Now, this Cliosophic Society, he would acquaint Senator Borah with them.

We don't know what they are. The only thing we have about that is that they hung placards out the window commending Mayor Hague down at Princeton, and Thomas could hardly get a hearing.

MR. ERNST: May I ask the mayor to answer my question?

THE COURT: Yes, go ahead. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

THE COURT: Do you want the question read?

THE WITNESS: Yes. Will you read it, please?

(Pending question read by the reporter.)

MR. MATTHEWS: I answer that, that Senator Borah is being pictured here as a man who would create disorder; Senator Borah would——

THE COURT: No, I don't think that's true. I think it is just the opposite.

MR. ERNST: My position is——

MR. MATTHEWS: Why would it be the opposite? Let's have the question. He said if Borah spoke under their auspices, would they be able to quell any disorder?

Now, where would the disorder come from? The Whig Society?

MR. ERNST: That's just what we are going to find out. I can't find it out so far. I would like an answer to the question.

MR. MATTHEWS: It is so nebulous.

MR. MATTHEWS: Do you want it read again?

A. If the Senator accepted an invitation—in the first place, I think it would be rather difficult for that society to get permission from the city officials.

Q. Why, Mayor?

A. Because of their reputation, that if their reputation was tainted with radicalism and Communism, and that their purpose was a purpose of disorder, of course it would be possibly, in the first place, difficult to get the permit. Now——

Q. Which society are you talking about? Are you talking about the same one I am?

A. I am talking about this group in Princeton.

Q. Yes.

A. That had Norman Thomas there.

Q. That's right.

MR. MATTHEWS: You mean Princeton University?

THE WITNESS: Yes.

Q. Now, do I understand——

A. That don't apply to the entire university, Counselor.

Q. That's right.

A. That's only a handful of boys that got together.

Q. That's right. Now the record shows, and they are looking it up, that the Whig Cliosophic Society of Princeton University applied for a permit for Senator Borah to speak in Jersey City.

A. Did they?

Q. They did.

A. And was it denied?

Q. And it was denied on the ground that there would be murder, bloodshed and disorder and violence.

A. Well, I question that.

Q. You question it?

A. I say I question the application, and I question whether Senator Borah had consented to talk——

THE COURT: It was a telegram, wasn't it?

MR. ERNST: What is that?

THE COURT: It was a telegram.

MR. MATTHEWS: Senator Borah wasn't a guest at that meeting.

THE WITNESS: Yes, I don't think that officially got before us.

MR. MATTHEWS: No.

Q. Now, it got before you, Mayor, to the extent that the Director of the Department of Public Safety wrote to John Harlin Cleveland, of the American Whig Cliosophic Society, Princeton, New Jersey, as follows:

"I have your telegram in which you request a permit, I assume for an outdoor meeting, to be sponsored by your society for Thursday evening May 12, 1938 at nine p. m. at Journal Square, Jersey City"——

Continuing to read the letter:

"I have made an investigation of the facts and circumstances pertinent to this application and believe it to be proper to refuse the issuance thereof. Your request for a permit, therefore, is denied."

Now, I am going to interpolate something. It is not on the ground that it is Journal Square, the center of town; it is not on the ground of the time; it is not on the ground that Senator Borah had not consented. I am now going to continue to quote:

"Denied on the ground that said meeting would tend to create disturbance and disorderly assemblage. Yours truly, Director."

Do you approve of that position? (Showing to the witness.)

A. No, no, I don't wish to see it, Counselor. It is perfectly all right.

Q. Do you approve of that?

A. In the first place, the telegram is not sincere. It is just in my estimation the same as I have received hundreds of them, just a joke. In the first place, that's no way to make an application for a permit as important as that.

Q. Mayor, you know——

A. And if I had seen the telegram, I would advise the Commissioner not to answer it.

Q. And you would reject the application because it is in telegram form and not in letter form?

A. Right; and I would first then communicate with the Senator and ask the Senator was he aware of just exactly the conditions surrounding this application.

Q. Yes. Now, Mayor, you know, don't you, that many applications are made for street corner permits to Mr. Casey where the applications are made over the telephone?

A. True.

Q. And verbally?

A. True. That's prior to this disturbance, Counselor.

Q. It is prior to this?

A. Yes, yes.

Q. Now, since this disturbance, your whole rules of practice have changed, isn't that right?

A. Well, necessarily——

Q. Just have they changed?

A. They have changed.

Q. They have changed. Now, at the moment, as I understand it, the Whig Cliosophic Society is undesirable, is that right?

A. Well, no, I am not going to be—I am not going on record as saying that.

Q. Well,——

A. I am going to say——

Q. But Mr. Casey——

A. I am going to say that the group that set themselves up in Princeton were not sincere, that they were only just doing it because somebody had prevailed upon them to inject themselves into this controversy. Now, why did they select this particular time, Counselor, to inject themselves into Jersey City? They never done it before.

Q. Do you want me to tell you why?

A. No—yes.

Q. The reason, as I understand it, Mayor, is that whereas you have been disturbed about an unfriendly press, and you thought the press might create disturbance in your town, these boys and a great part of the people in this nation, think you have been badly advised; they think that you are denying civil liberties; they think you should open up Hyde Parks, allow American citizens to speak, and I have in my office, and will be glad to show them to you, not one or a hundred but literally thousands of letters, saying, "I hope we can restore civil liberties in Jersey City."

MR. MATTHEWS: Now, just a minute.

Q. (Continuing.) And these Princeton boys that had three or four meetings previous——

A. Where?

Q. Your son may have been a member of the society at Princeton for all I know. Do you know whether he was?

A. I don't think so.

MR. ERNST: Does anybody here know?

Q. It is not unlikely?

A. No.

Q. This is an old and respectable, conservative society in Princeton.

A. Well, they don't go in for this type of disturbance, Counselor.

Q. There is plenty of it though?

A. Oh, plenty of it.

MR. MATTHEWS: Just a minute, Mayor. May I address the Court?

This, of course, speech, in telling the Mayor why this group of kids down at Princeton pulled this stuff is not true; and moreover, when he is talking about the letters in his office, why, I am only one of the lawyers, and I am inundated with letters and telegrams from people, saying, "Would to God that there were more men in the country like Mayor Hague to take the battle-front against you Communists."

MR. ERNST: Me?

MR. MATTHEWS: You, yes, sir; you. And here you are branded as such (indicating); right here.

Q. I have got one other question; I have got one other question, Mayor, before we close.

MR. MATTHEWS: I will show it to you later.

Q. I want to read to you what I think is a segment of public opinion today for a good portion of America——

A. Of what?

Q. Of a good portion of the American people, and after I have read it I will ask a question, and I suggest that you not answer it until you see Mr. Matthews' signal.

MR. MATTHEWS: Tell him where you are reading it from.

MR. ERNST: I am going to, sir.

MR. MATTHEWS: All right.

Q. It is an editorial from the "New York Times"——

MR. MATTHEWS: Oh, boy!

Q. (Continuing.) — of June 15, 1938. It reads as follows; the caption is in quotes:

"No free speech issue."

It is very short, your Honor.

THE COURT: Go ahead.

Q. (Continuing.) I am quoting now:

"The lines of Mayor Hague's defense of his course in Jersey City are clear. Free speech? Certainly. But not for Communists. Communists have no right that anyone is bound to respect. What is a Communist? That's easy. Anyone who associates with other Communists. A Communist is any official of the C.I.O. (except John L. Lewis). A Communist is Norman

Thomas, the Socialist; a Communist is Morris Ernst, Roger Baldwin, Congressman Bernard, the Farmer-Laborite from Minnesota, Jerry O'Connell, the Democratic congressman from Montana. A Communist in short is anyone that Mayor Hague is determined not to permit to talk in Jersey City. He will not permit such people to speak for two reasons: first, because they are Communists (see above); and second because they must be rushed out of town to protect them against an aroused citizenry. And who arouses the citizenry against them? But we need not pursue this course of reasoning farther."

MR. MATTHEWS: Reasoning?

Q. (Continuing.) "If Mr. Hague's logic were allowed to prevail, there will be just as much free speech in this country as local bosses are inclined to permit, and no more."

The question I wish to ask you is this. Before the question——

MR. ERNST: I have warned him not to answer.

MR. MATTHEWS: He never pays any attention to you.

MR. ERNST: He doesn't?

MR. MATTHEWS: No, no, no.

Q. Mayor, I just want to ask you this one question: Don't you think in the light of that reasoning of a sober, conservative paper, that you are probably creating radicalism in Jersey City by trying to throttle the rights of free speech and public assembly?

MR. MATTHEWS: Have you finished?

Q. (Continuing.) Don't you think you are throttling the rights of free speech and public assemblage?

MR. MATTHEWS: Mr. Mayor, I want to object, first of all, before you do answer that question—first of all

there is a gratuitous assumption in that question that there is reasoning in the article. Whoever wrote that had constipation of thought and a corresponding antithetic disease of words.

A. I read it this morning, and I thought Morris had a hand in it.

MR. MATTHEWS: Sure, and I therefore say that constipation of thought would be a good characterization of it, and the antithetic disease of words. You get me.

Now, I object, your Honor, to that question, because it asks the Mayor to characterize an editorial written in what he has called a conservative and sober paper. I have read editorials in the "New York Times" of the CIO which would make you think that there wasn't a one in them that wasn't a Communist. Now, why should the Mayor be called upon to characterize it? Unless he would like to.

MR. ERNST: I didn't ask him——

MR. MATTHEWS: And if you would like to, Mayor, you may, but——

MR. ERNST: If your Honor please, I didn't ask him to characterize the editorial at all.

MR. MATTHEWS: Well, that's what it is. You call it reasoning.

MR. ERNST: No, no; follow me a minute.

A. If Morris Ernst was to produce the various stories in magazines and editorials against me that he had his finger in, they would fill that table.

MR. MATTHEWS: I see.

Q. You flatter me, Mayor.

A. No, I don't.

MR. MATTHEWS: Flatten, you mean, not flatter.

Q. If I had——

A. I don't flatter you.

Q. If I had done it I would be proud, sir.

A. No, I don't flatter you.

Q. Now will you answer my question?

MR. MATTHEWS: Do you want to answer it? He says no, he is not going to characterize it. I object to that question.

Q. In the light of that editorial, isn't it possible that you are fomenting radicalism by not allowing people the outlets of free speech, public assemblage, in Jersey City?

A. We won't allow——

MR. MATTHEWS: No, I object as irrelevant to this issue.

THE COURT: Do you want to ask your client if he wants to answer it?

MR. MATTHEWS: No, I order him not to answer it, with your permission, and he obeys my order.

MR. ERNST: Out of deference to the plaintive mandate of counsel, I withdraw the question.

THE WITNESS: Well, I would prefer to leave the question.

MR. MATTHEWS: It is withdrawn, it is withdrawn, Mayor.

THE COURT: You can argue it out later.

Ten-thirty in the morning.

MR. MATTHEWS: All right.

(At this point an adjournment was taken to Thursday, February 16, 1938, at 10:30 A. M.)

Thursday, February 16, 1938.

Case continued.

Appearances as before.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Resumed).

By MR. ERNST:

Q. Mayor, in coming to your conclusions as to whether people are desirables or whether they would offend the city, you rely to a considerable extent upon the public press?

A. Well, the public press—of course, a man in public life, Counselor, has got contacts and hears things possibly where a man in private business wouldn't hear, that is, on public questions; I have that means of ascertaining.

Q. I didn't ask you that, I just asked do you rely to a considerable extent on the press.

A. Yes.

Q. And the answer is yes. You don't believe everything you read in the press, do you?

A. Well, it depends upon who writes it.

Q. Who writes it. Now——

A. If it was the New York *Post*, no.

Q. If it is in the *Post*, no.

A. No.

Q. How about the Hudson *Dispatch*?

A. Well, that's—they have pr[illegible]y good writers there.

Q. Pretty good writers. Do you know Haddon Ivins of the Hudson *Dispatch*?

A. Why, he is one of my best friends.

Q. Yes.

A. A very capable newspaper man.

Q. What is his relation to the Hudson *Dispatch*?

A. He is the managing editor, isn't he?

Q. Does he hold a state job, or city job, or county job?

A. Yes, he is librarian; makes a very good one, too.

Q. Yes. What about the Jersey *Journal*? Is that a paper that by and large you would think is pretty good writers, as you say?

A. Well, that's a Republican paper.

Q. Well, it might still be good writers, might it not, Mayor?

A. Well, it is a very consistent paper. It has been in our city for a great number of years, fifteen or sixteen years.

Q. And it is a reliable paper, is it?

A. Yes.

Q. Your answer is yes. It is owned by the Dears, isn't it?

A. Judge Dear is——

Q. Judge Dear; all right. And what position does Judge Dear hold in the payroll of the city, state or county?

A. He is a member of the Court of Appeals and has been such a great number of years.

Q. Do you know a man named John Rickett of the Jersey *Journal*?

A. Yes, sir.

Q. A reporter on the Jersey *Journal*?

A. Yes; a very good one.

Q. A very good one. Do you know if his wife holds a job on the payrolls of the city, state or county? Just do you know if she holds a job?

A. I don't know.

Q. You don't know?

A. I couldn't answer that.

Q. Don't you know that his wife holds a $3500——

A. She doesn't hold one with the city, I know that. You said state or county.

Q. Yes.

A. She may be in the state, I don't know.

Q. Do you know whether she holds a $3500 job as a special investigator connected with the criminal courts?

A. No.

Q. Could you find that out for me at the recess?

A. Does the record show that?

Q. I don't know, I am asking, could you find that out for me at the recess?

A. What branch of the government?

Q. Special investigator to the criminal courts.

A. I would be glad to. Hudson County?

Q. I don't know, just somewhere, I think in Hudson County.

A. In our county?

Q. Yes. Now, Mayor, the *Observer* is a pretty reliable sort of paper from your point of view, isn't it?

A. Yes.

Q. Does the *Observer* hold the contracts for printing of public documents of any kind such as ballots?

A. They run an independent printing concern. Of course, they bid on all types of printing; if they obtain contracts, it is because of competitive bidding.

Q. And do they print the ballots?

A. Frequently, yes.

Q. Mayor, you are quite proud of your record in maintaining peace and security for property in Jersey City, aren't you? The record is pretty good?

A. We have been very successful, Counselor.

Q. That is, your success is indicated by the fact that there are few assaults and murders and burglaries?

A. Yes.

Q. Mayor, do you know what the FBI is?

A. The what?

Q. FBI.

A. What is the FBI?

Q. Well, it is the Federal Bureau of Investigation connected with the Department of Justice.

A. Under Mr. Hoover, yes.

Q. Yes; you know about it. Don't you know that the FBI collates, prints, publishes and distributes records from cities throughout the United States in regard to the facts relating to maintenance of peace and order?

A. Yes, sir; that is, it is not compulsory of their part, that is their system, that is to compile records for themselves.

Q. But you know they do print it?

A. They do that, as I say, to compile records for their own department; there is no law compels them to do that.

Q. That's right, but they do print them?

A. Yes.

Q. Don't you know that Jersey City is the only city in the United States whose records in regard to safety and the protection of property are not incorporated in Hoover's periodic reports to the American people?

A. No, no, no.

Q. Do you know that it is the only city?

A. We have—now I must be permitted to explain that.

Q. No, you can say whether you know if it is the only city.

A. No, now, that is unfair.

Q. Now, Mayor——

A. Now, there is no use you and I getting into a discussion. I want to explain why we withdrew from that.

Q. I will ask that later. I just want to know if you know you are the only city.

A. I do not know, not officially.

Q. Do you know whether or not the Jersey City figures on police protection and crime are incorporated in the reports of Hoover under the Department of Justice?

A. They were incorporated.

Q. Do you know if they are now?

A. For years, but now, no; that is my information is no.

Q. Wait a minute, we will get to it. Your counsel can get to it. Do you know of any correspondence that has come to the officials of Jersey City from the Department of Justice, Federal Bureau of Investigation, as to why the Jersey figures are not incorporated? Just do you know of any correspondence.

A. Other than what I have learned through the Director and the Chief of Police.

Q. I am just asking do you know of any correspondence?

A. No.

MR. MATTHEWS: I think he has answered.

Q. None at all?

A. No.

Q. Mayor, will you at recess see if you can locate any correspondence from the Department of Justice, or the Federal Bureau of Investigation, or Edgar Hoover himself, indicating the reasons why the figures of protection in Jersey City are no longer included in the reports? Will you just see if you can locate the correspondence?

A. Be glad to; but——

Q. All right.

A. But, just a minute.

Q. Now——

A. Why take up the Court's time——

Q. Just a minute, please.

A. Well, just a minute. Why take up all the time when we can settle it in two seconds——

Q. No, I——

A. (Continuing.) —if you will permit me to talk.

Q. No, I won't permit you.

A. Well, why do you deny me the right——

MR. ERNST: If your Honor please, he will have ample time to talk——

THE WITNESS: I can explain this whole situation.

MR. ERNST: No, I am going to proceed in my own way.

THE WITNESS: The controversy that has taken place——

MR. ERNST: Your Honor, I ask——

THE WITNESS: —between this Bureau and Jersey City——

MR. ERNST: Your Honor, I ask that the Mayor conform to the rules of court.

THE WITNESS: But you must be fair, Counselor. There is no rules of court for you.

MR. ERNST: If your Honor please, I call on your Honor for a ruling. These questions call for a direct yes or no answer.

THE COURT: What is the question, please?

MR. ERNST: He answered my question, but he wants to make a speech.

THE COURT: Read the question and the answer.

THE WITNESS: It is no speech when I was asked for a statement.

MR. ERNST: Just a second, Mayor, please.

THE WITNESS: I didn't ask for any speech. Why are you afraid of the truth?

MR. MATTHEWS: That's a good one.

MR. ERNST: Will you read the question and the answer to the Court, please?

THE WITNESS: Why don't you tell the facts here?

THE COURT: Read the question and the answer, please.

THE REPORTER: If the Mayor will just stop a minute——

MR. MAYOR: Why don't you ask him to stop?

(Question and answer read by the reporter.)

THE COURT: What is the relevancy of this, Mr. Ernst?

MR. ERNST: If your Honor please, the testimony indicates, and may I talk without interruption by Mr. Matthews——

MR. MATTHEWS: You may if you don't transcend the bounds of propriety.

MR. ERNST: Your Honor, will you determine——

THE COURT: Excuse me a minute.

(At this point the Court took up another matter at side bar.)

THE COURT: Yes.

MR. ERNST: If your Honor please, in answer to your inquiry, may I say that the Mayor has testified, and I believe entirely honestly, from his point of view, that Jersey City has done a splendid job in the protection of property, that its police are efficient and able to keep order. This testimony impinges on two points that I wish the witness, who is my witness, called by us, would clarify the situation; one goes to the question of whether or not his vast police force cannot also keep order to protect personal liberty as well as property, and the other part of the question goes to this: I intend to prove that the figures of Jersey City in regard to crime and police protection and efficiency have been deemed by Edgar Hoover and the Department of Justice——

MR. MATTHEWS: I object, if your Honor please, to that statement on this record.

MR. ERNST: —to be so dishonest and inaccurate——

MR. MATTHEWS: That's a statement of this counsel.

MR. ERNST: I intend to prove——

MR. MATTHEWS: Which he knows is not true, and I ask the Court at this time to direct him to desist,

because that would be, as your Honor well put it, irrelevant, any hearsay conversation between them.

MR. ERNST: I asked him to get the letters, your Honor, because the letters will show it, if they can be found.

MR. MATTHEWS: I object, if your Honor pleases——

THE COURT: What letters?

MR. ERNST: May I go one further? And will you please stop me if I am in disrespect of the Court, instead of being interrupted? I am answering your inquiry. I want to go one further on this thing. I have asked the witness if he knew of any of the correspondence. He said no, a truthful answer. I asked him if he would look it up. He said he would gladly do it. Now he will not find, in my judgment, those letters.

And so I want to suggest this to get at the truth. Will you wire to Edgar Hoover and I will introduce in evidence any answer that Hoover gives to Mayor Hague.

THE WITNESS: Why don't you let me prove that?

MR. ERNST: As to why——

THE WITNESS: Why don't you let me prove that?

MR. ERNST: You can do it with your counsel.

THE WITNESS: I could clear it up in five minutes, but you don't want me to clear it up. Your Honor, I could clear it up in five minutes.

MR. ERNST: As to why the Department of Justice——

THE COURT: Go ahead.

MR. ERNST: —refuses to believe——

MR. MATTHEWS: I object to that, there is no evidence——

THE WITNESS: Wait a minute.

THE COURT: Go ahead, Mayor.

MR. ERNST: You are going to allow him to make a speech on the subject?

A. Two or three years ago my attention was called by the Chief of Police and the Director of Public Safety to the investigation that the Department of Justice, that is, Mr. Hoover's department, was making of the records of the Jersey City police department. I had obtained a copy of their report and they showed in their report, I have forgotten just exactly the number of homicides that was reported in the Department of Justice to Jersey City. I had the number of homicides investigated and I found that out of the number of homicides there was quite a number of them was automobile accidents and they listed them as murders. That I objected to because they were pure and simple accidents, and they simply told us that they were going to run their department and if we didn't like it they would withdraw, and I said to the Director of Public Safety, "Let them withdraw, they can't involve us in homicides and put us in the category of murders when it is only automobile accidents and mere accidents"; because of a state law we had to book them as murder, the state law compelled us to book them as murder, and I asked the Department of Justice to list them as they should be properly listed, and they said, "No, we will list them as we like. We says, "Then you cannot examine our records any further" and that discontinued the Department of Justice. Now, I don't see anything serious about that, Counselor.

Q. I didn't say it was serious.

A. That is the correct answer.

Q. I didn't say it was serious.

A. Now, if Mr. Hoover and I have disagreed on that I am not at fault, Mr. Hoover is at fault, and I think he is the most competent man in the country today and always have thought so.

Q. Mayor, do you take the position that Edgar Hoover treated the records of Jersey City differently than he treated any other city?

MR. MATTHEWS: He hasn't said anything of the kind.

MR. ERNST: I didn't say that he said it. Will you kindly make your objection as a gentleman and a lawyer.

MR. MATTHEWS: When it comes to a gentleman, sir, you are not in a position to talk because you have proved yourself to the contrary many times.

Q. Will the Mayor kindly answer my question?

MR. MATTHEWS: I say again the Mayor hasn't said that and I object to the question, it is improper.

MR. ERNST: Will your Honor rule?

THE COURT: I sustain the objection.

Q. Mayor, when you say in your story that they treated certain reports of yours in a certain way do you intend to leave the impression that Hoover treated your reports differently than those of other cities?

A. No, sir, he did not, he treats every city alike.

Q. That's right.

A. And I didn't think it was fair, Counselor, to simply send us in with twenty-five murders when we only had two because of accidents and because of a state law.

Q. Now, Mayor, you are a pretty good sporting gentleman, I want to make you this proposition in the form of a question: Will you, to resolve this particular point of testimony, telegraph to Edgar Hoover——

MR. MATTHEWS: I object, your Honor.

Q. Let me finish my question.

MR. MATTHEWS: I object to it, will he do it. Make the request to the witness like a gentleman would.

Q. (Continuing.) —and ask——

MR. MATTHEWS: I object, I object, if your Honor please, will he telegraph to Mr. Hoover.

MR. ERNST: May I finish my question.

A. Counsel, that is very unfair.

MR. MATTHEWS: That is not the way to get evidence in this case.

MR. ERNST: May I finish my question?

THE COURT: I won't permit questions about telegraphing.

Q. Mayor, you will bring over after lunch, I understand it, your entire file with Edgar Hoover on this subject?

MR. MATTHEWS: I object, if your Honor please; he just said that no such correspondence exists.

A. I don't know of any files.

MR. MATTHEWS: He wants to leave it in this position, if at noon there is no correspondence, they wouldn't produce it. We don't say we won't like they do. If they will give us a subpœna we will produce anything they want, anything, everything; we won't argue the subpœna.

MR. ERNST: Will you take this as the equivalent of a verbal subpœna?

MR. MATTHEWS: No.

MR. ERNST: Or do you want it in writing?

MR. MATTHEWS: No, we want it in writing because we want you on record.

MR. ERNST: Just a second.

MR. MATTHEWS: We want you on record.

MR. ERNST: Will you please issue a subpœna for all correspondence with J. Edgar Hoover?

MR. MATTHEWS: I object to his directing his clerk. Go ahead with the case, try it as New Jersey does.

MR. ERNST: All-right, we will get the subpœna.

Q. Mayor, in the papers today I read "Mr. Hague is lauded in the Reich *Times*——

A. Don't blame me for that.

Q. I am not blaming you.

A. The *Daily Worker* might have my picture in it; don't put that on me.

Q. So you cannot be blamed because of what appears in newspapers, is that right?

A. Well——

MR. MATTHEWS: No, he says he cannot be blamed——

A. Some newspapers——

MR. MATTHEWS: —for what the Reich did.

Q. Some newspapers. Now, will you specify the newspapers for which you cannot be blamed?

A. You are sure you didn't put that in there?

Q. Will you specify the newspapers for which you cannot be blamed? You have made a distinction.

A. I object to that, Counselor. I am too smart for that. Just a minute.

Q. You will admit there are some newspapers.

A. If you are trying to get me in a controversy with the newspaper I don't want it.

Q. No, you put your foot in it, Mayor.

A. They are all my friends.

MR. MATTHEWS: You put your foot in your mouth.

Q. Big foot, Mr. Mayor.

MR. MATTHEWS: Big mouth, Mr. Mayor.

A. That is your strong point.

Q. Mr. Mayor, I am going to ask you another question, this question is withdrawn. I am going to ask you now whether you repudiate endorsements appearing in the press from Nazi Germany commending you for your position, do you repudiate them or not?

MR. MATTHEWS: I object.

MR. ERNST: Does the Mayor want to answer?

A. Why, I don't know nothing about it. Repudiate what? I have no contacts——

Q. Mayor, in answer to your question I will tell you what.

A. Here comes the hero.

Q. In headline copyrighted——

A. Here comes the hero in.

Q. —by the Chicago *Tribune* published in the New York *Times* of today, dated headline Berlin, June 15, reading as follows: "The German Official Radio and tomorrow's edition of the Lokalanzieger will glorify Mayor Frank Hague of Jersey City, New Jersey, as a 'Man Fighting for the Cause in the United States'; they will praise him as 'An Outstanding Opponent of Communism.'"

I ask you do you repudiate that endorsement?

A. Has that anything to do with any isms?

Q. Are you going to answer my question?

A. Well, you must enlighten me.

Q. I want to know if you repudiate that endorsement.

MR. MATTHEWS: I object. The Mayor repudiates Naziism and all isms except Americanism.

THE WITNESS: Right.

MR. MATTHEWS: That is why he repudiates you; he doesn't believe you represent Americanism.

Q. Mayor, you repudiate Naziism, your counsel says.

A. I repudiate any ism, I don't care what it is, that is un-American; I don't care who is behind it or who is for it or who is against it.

Q. Now, you don't mean any ism?

A. Well, against Americanism.

Q. Do you repudiate Naziism?

MR. MATTHEWS: He has already answered he repudiates all isms that are anti-American. What possible relevancy has this to this case, trying it for the newspapers?

MR. ERNST: Your Honor please, I want to know whether the man is discriminating on certain isms in respect to denial of civil liberties, free speech, free press, free assembly.

THE COURT: We cannot go into national affairs in too great detail.

Q. I just want to know if you repudiate Naziism.

A. I repudiate any ism against America.

Q. You refuse to say whether you repudiate Naziism?

MR. MATTHEWS: He hasn't said anything of the kind. That is to put a cheap headline in some sheet subsidized by him, and that will be the streamer "He refuses to repudiate Naziism." He repudiates any kind of ism that is against America and he repudiates you.

MR. ERNST: If your Honor please, will you kindly ask Mr. Hamill's assistant to make objections to testimony? (Laughter.) And to proceed in an orderly fashion without speeches.

MR. MATTHEWS: That's not a speech.

MR. ERNST: I shall not stoop to his level, no matter how he behaves.

MR. MATTHEWS: If you did, you would have to get up near the ceiling. I am picking you out of the gutter, continually.

(Noise in the court room.)

MR. ERNST: This is a court of law.

MR. MATTHEWS: You have made it a circus.

THE MARSHAL: Quiet, please. No laughter.

MR. FRAZER: May I ask the Court to restrain Sir John's logorrhea.

MR. ERNST: If your Honor please, will you instruct counsel——

THE COURT: Will you proceed, Mr. Ernst?

MR. ERNST: No, I think I am entitled to a direction of the Court, as to whether or not this gentleman, representing Frank Hague, and I may add in the mood of the entire Hague plan, against civil liberties, shall be allowed to continue, not to make objections, not to take exceptions, but just to make speeches?

MR. MATTHEWS: Now, if your Honor please, you can see that that statement of Mr. Ernst is a speech, but the trouble with Ernst is he makes such bad speeches he doesn't recognize them as speeches, and I don't blame him. Now, if the objection is to my objecting, I submit that I should not be prevented from objecting, but if the objection is to his making remarks about Naziism and lugging in extraneous issues, I think my objection is well placed.

THE COURT: Well, I have said it before, I don't think personalities are relevant.

MR. MATTHEWS: No.

MR. ERNST: Thank you very much, your Honor. I hope counsel will not interrupt——

MR. MATTHEWS: No, I never interrupt except to act as a gentleman, and he has such a poor method that I have to answer him in kind.

MR. ERNST: Thank you very much, your Honor. I hope that counsel will live up to your ruling.

I think Mr. Matthews should be restrained from further personalities.

THE COURT: Yes, they are not relevant here.

MR. MATTHEWS: Only when I have to answer will I ever indulge in them. When you are in Rome, you have to do as the Romans do, although I don't like to call my opponent a Roman.

MR. ERNST: If your Honor please, we are not in Jersey City——

MR. MATTHEWS: No, and we are not in New York.

MR. ERNST: Let's proceed.

MR. MATTHEWS: We are in the Federal court.

Q. Mayor, you are opposed to Socialism?

A. Yes.

Q. You are opposed to Communism?

A. Socialism in certain respects, now. Now Socialism for a long while was——

Q. I say now.

A. Well, wait a minute, just a minute.

Q. I say now, Mayor.

A. Until Norman Thomas got to be the head of it, and then they went over to Communism. Now they are all out.

Q. When did Norman Thomas get to be the head of it?

A. Well, the day he was pictured in New York with the salute.

Q. What date was that, Mayor?

A. The May Day Parade.

Q. All right. And he never was the head of it before?

A. And they were singing the Nationale.
Q. And he never was the head of it before?
A. Oh, he has been the head of it for a long while.
Q. How far back, would you say?
A. Oh, ten years.
Q. Ten years?

THE COURT: Will you excuse me a minute, gentlemen?

MR. ERNST: Yes, your Honor.

THE COURT: I am obliged to take a short recess.

(At this point a short recess was taken.)

Q. Mayor, do you believe that the position of a man's hand held over his head in relation to maybe a fist is some indication as to whether or not he is an undesirable, just some indication? There may be other factors. Do you believe it is some indication?

MR. MATTHEWS: Now, if your Honor please——

A. It depends upon——

MR. MATTHEWS: Wait a while, wait a while, that question isn't a relevant question unless it recites that the man's hand is over his head with relation to a fist at a Communist meeting; it depends on the kind of meeting.

MR. ERNST: Your Honor, please, the Mayor himself, if you want to take the time, referred to it as some evidence.

THE COURT: He did.

MR. ERNST: I just want to ask him if he considers it some evidence of undesirability.

A. I referred to the *Times* picture which charged him as being a Communist and charged him with the pinks and greens and reds.

Q. And in that picture you saw, you say, Norman Thomas with his hand raised over his head in fist formation, and that you took that fact into consideration?

A. Yes, but the papers said in the Russian salute.

Q. The papers said it?

A. Yes.

Q. Did you look at the pictures?

A. The picture was there in the *Times,* the Sunday Times, the day after the——

Q. Did you look at the picture, Mayor?

A. Yes, yes.

Q. And the picture showed, as I understand your evidence, that the man had his hand raised over his head and the fingers were formed in fist formation, right?

A. And——

Q. Did it show that?

A. And twenty-five others.

Q. No——

A. On the stage with him.

Q. That's right. But that one man had it?

A. Yes.

Q. Now, Mayor, may I ask you to look at this picture which is the Newark *Star Eagle* of Saturday, June 11, 1938, and merely ask you whether that contains a picture of Frank Hague?

A. Yes, yes, sure.

MR. ERNST: If your Honor please, I offer in evidence page——

THE WITNESS: You don't charge me with having made the Russian salute, do you?

MR. ERNST: Will you kindly wait. You are a witness in a court of law.

MR. ERNST: I offer in evidence—may I just have my exhibit in my own hands?

MR. MATTHEWS: Yes, yes, sure.

MR. ERNST: I offer in evidence page 5 of the Newark *Star Eagle* of Saturday, June 11, 1938, with particular reference to a picture of one Frank Hague, under a caption entitled "Hague with his legal battery."

MR. MATHEWS: May I see the picture now before it is offered?

(Paper handed to Mr. Matthews.)

THE COURT: Are you in it, Mr. Matthews?

MR. MATTHEWS: Yes, it is a good picture of me. I have got my cigar and my brief case. Eddie O'Mara, and Charlie, Dan Casey, Kennelly, and poor Jimmie Hamill—one side of you is spoiled with Frank's arm there.

MR. HAMILL: I am the best looking man in it.

MR. MATTHEWS: Yes, that's true, Jimmie.

We have absolutely no objection to that picture going in evidence. It shows his pulchritude.

MR. ERNST: May I stop counsel as to what it shows? The picture speaks for itself.

If your Honor please, I would like to show it to you so that you may see whether or not it is admissible.

THE COURT: Yes, there is no objection, so it is admitted.

MR. ERNST: All right.

(Received in evidence and marked Exhibit P-39.)

MR. MATTHEWS: No objection.

Q. Mayor, are you familiar with a paper called the *Newark Sunday Call*?

A. Yes, sir.

Q. Is that one of the reliable or unreliable papers?

A. It certainly dislikes me.

Q. Now, Mayor, I want you to look at the issue of November 21, 1937, of this paper, on page number one——

MR. ERNST (To Mr. Hershenstein): Either stand there or here, if you don't mind.

MR. HERSHENSTEIN: I like to watch you.

MR. ERNST: I know; I am just moving around——

THE WITNESS: I guarantee he won't stab you in the back, Morris.

MR. ERNST: No, no implication.

THE WITNESS: No, no.

MR. ERNST: Just an implication of courtesy.

THE WITNESS: Charlie is your friend.

Q. May I indicate, Mayor, that I am going to show you the issue of November 21, 1937, and ask you to read the column which has a caption entitled "C. I. O. Unit here plans invasion of Jersey City," and I want you to read the entire article and then I will ask you some questions in regard to it.

Mayor, I think I can help you, if you don't mind. I will indicate the line of general questions that I want to ask. I will ask specific questions later, so that while you are reading you can particularly follow the things that I have in mind. I want to ask you whether you see anything other than the headline, any word, phrase or comment in the report itself that indicates in any way that there was to be an invasion, that there was to be two hundred or forty people or three thousand or any number or any implication of anything but peace, and if there is anything there that implies disorder.

MR. MATTHEWS: I object, if your Honor please. He wants the mayor to say that the headlines of the

Sunday Call are false; Eddie Bataille, Eddie Hipp to the rescue." You surely don't mean to ask the mayor if the headline is false and the report true; newspapers don't do that, not much.

THE COURT: Is this the same statement we have been talking about by Carney?

THE WITNESS: This is the first statement.

Q. This is what?

A. This is the same statement that appeared in the *Newark News* and all the other New York papers of Carney's invasion of Jersey City.

Q. Now, Mayor, did you read it when it went over to the next page?

A. Counselor, I imagine that that is a scaring headline for any community.

Q. Mayor, I asked you a simple question; did you read——

A. No.

Q. —the article on the next page. Will you please do so?

A. I didn't read the complete article on the front page.

Q. I would like you to read the complete article.

A. It will take too long.

Q. No, we can wait, no longer than Mr. Matthews' speeches.

MR. MATTHEWS: You are borrowing more trouble for yourself, I can see that.

Pardon me just a minute, now, your Honor, before the mayor replies to that may I be permitted to read the article so that I can see whether it is objectionable?

THE COURT: It is the same one we talked about, isn't it, at great length?

MR. MATTHEWS: I am frank to say I read the *Call* every Sunday but I don't recall that I saw this article.

I will hurry. . . . I have now familiarized myself with the article.

MR. ERNST: Your Honor, I wish to offer in evidence the *Newark Sunday Call,* issue November 21——

MR. MATTHEWS: I have no objection.

MR. ERNST: —1937.

MR. MATTHEWS: I have no objection to the *Sunday Call* going in evidence.

MR. ERNST: This as well as the picture?

THE COURT: He has no objection.

MR. MATTHEWS: I have no objection at all.

MR. ERNST: I wish to put in evidence the issue of the *Newark Sunday Call,* November 21, 1937, late city edition, the issue referred to by the witness in his last questions with particular reference to the article which has a caption bearing "C. I. O. unit here plans invasion of Jersey City."

MR. MATTHEWS: I have no objection to the *Sunday Call* going in evidence.

(Received and marked Exhibit P-40.)

Q. Mayor, in reading that article did you find any reference at all to two thousand men or three thousand men? Just yes or no, did you find any reference?

A. No, sir.

Q. Did you find any reference to any other number of men?

A. Other than the headlines "C. I. O. plans invasion of Jersey City."

Q. Now, Mayor, I read the headline into the record and my questions are only going to relate to the article itself. I ask you do you find any reference in the article itself to any number of men?

A. No.

Q. Do you find any reference in the article itself as to any invasion or entrance into Jersey City?

A. Well, the headline——

Q. The article itself, Mayor, do you find any reference in the article itself?

A. No, other than the caption, the headline.

Q. Mayor, will you kindly answer my question?

A. No, sir.

Q. Do you find anything in the article itself?

A. No, sir.

Q. Do you find anything in the article itself that in any way indicates that there would be disorder, the article itself?

A. The article does not state that there is going to be any disorder.

Q. Do you find anything in the article, that is, other than an indication of a peaceful move, toward the organization of labor in Jersey City, nothing in the article itself, is there?

A. Nothing that I could see.

Q. Mayor, under what circumstances, in your opinion, have you the authority and the legal right to take people out of Jersey City and put them outside of Jersey City, take them in Jersey City, and put them outside? Under what circumstances have you the right of what has been called in this trial deporting?

A. Oh, there was nobody deported. What do you mean by deported?

Q. I didn't ask you that. Is there in your opinion any right to take people from Jersey City and remove them outside of Jersey City?

A. Are you referring to the presence of Mr. Thomas here? Is that what you are referring to?

A. No, I am not at all.

A. Well, who do you refer to?

Q. I am referring to a basic proposition of just simply do you claim to have the right to take human beings, living

or temporarily in Jersey City, and put them out of Jersey City? Do you claim to have that right?

A. That entirely depends on circumstances, Counselor.

Q. All right. Now, Mayor, will you tell us under what circumstances?

A. As far as putting out, there is nobody putting out at all.

Q. All right. Let me ask——

MR. HERSHENSTEIN: Let him finish, please.

A. (Continuing.) There is no putting out.

Q. Let me ask my question again.

A. If a condition may arise where police officers are present and they find that the condition is so dangerous and involves disorder and possibly bodily harm, the fact of escorting anyone out of that scene of danger—that isn't deporting people, Counselor.

Q. No, I didn't say it was, Mayor.

A. Well, I say that's the fact.

Q. No, I didn't say that was deporting. You are talking about something that I haven't asked you about.

A. You said deporting, first.

Q. No, no, you are talking about taking people out of the scene of danger.

A. No, no——

Q. Now, will you listen to me?

A. I will give you an answer, Counselor; if you don't get so excited, we will get along better.

Q. Mayor, if you will listen; it is a simple question.

A. I know what the question is.

Q. Let me try it again.

A. But I know what your question is, Counselor.

Q. No, you don't. Your answer shows it. You don't understand it at all.

A. No, my answer don't please you.

Q. I am just asking a very simple question: Is there any circumstance at all, don't tell me the circumstance, just

is there any, yes or no, when you claim that the police have the power to take a human being in Jersey City and remove him out of Jersey City?

A. Yes, sir.

Q. Is there?

A. There is.

Q. That's the answer.

A. Now, you want me to explain, don't you?

Q. No, I don't.

A. Oh, well, you will have to.

Q. I will let you explain to Sir John Matthews.

A. Well, just a minute, now. Just a minute; now be fair.

Q. No, no, I am not going to let you make a speech. You can't make a speech now.

A. You must be fair. I endeavored to explain to you——

Q. No, I will ask you those questions.

A. But you say that frequently; you say that frequently but you don't come back to them.

MR. HAMILL: May I say something, your Honor?

Mr. Ernst's question, as it appears on the record, is this: are there any circumstances under which you claim the power—I would say duty—but he uses the word "power"—under which you claim the power to remove persons from Jersey City? The answer is yes, and then he goes on to tell what the circumstances are; and why shouldn't he be permitted, in fairness, to do that?

MR. ERNST: No, I didn't ask him the circumstances. are you moving to strike out his answer?

MR. HAMILL: No, I am moving——

MR. ERNST: Well, wait until I frame a question, Jim, and then you can object to my question.

MR. HAMILL: Here is what you are doing, outside of all this; you are cross-examining your own witness. Now, I know that you are claiming he is a hostile witness, but my understanding of the law is that the mere position of a man as a defendant does not ipso facto make him hostile. He must evince hostility, and this witness has shown a willingness to answer all of your questions, and there is nothing about hostility on the part of the witness in the record.

MR. ERNST: Not at all. He called me Morris.

MR. HAMILL: And the Court——

MR. ERNST: He called me Morris yesterday.

MR. HAMILL: Yes, which shows that you and your witness are on friendly terms.

MR. MATTHEWS: Sholem aleichm.

MR. ERNST: I will be calling him Frank if you will let me alone a minute.

MR. HAMILL: That shows you are on good terms. If you will listen to him, he will no doubt convert you to his views, for they are just views. But he should be permitted to explain the circumstances.

MR. ERNST: I am going to ask him the circumstances.

THE COURT: As I understand, Mr. Hamill, the Mayor said that his position is that he could deport people—I shouldn't use the word "deport," that is a word of art, so to speak—that persons can be removed for their own safety.

THE WITNESS: Yes.

THE COURT: Now, as I understand it, the complainants say they can be removed for no purpose whatever. That is their legal position. Is that correct, Mr. Ernst?

MR. ERNST: I want to ask him——

THE COURT. And I suppose I will have to, when I come to decide the case, adjudicate whether that is correct, whether the complainants' position is correct. I will therefore express no opinion orally about it.

MR. HAMILL: No. Now he wants to explain the circumstances, and I think he has a right to explain the circumstances.

MR. ERNST: I am going to ask him, if you will only let me ask my question.

A. Yes, but you do that so frequently and you don't come back.

MR. HAMILL: When he tried to explain the circumstances you stopped him.

MR. ERNST: I am going to get it in an orderly fashion in my way.

A. You let me hang out there on a limb and run away.

Q. Of course, I am going to hang you further out and your counsel can pull you down.

A. I will pull myself down, don't worry about that.

MR. HAMILL: I suggest you adopt the plan I suggested and let him explain the circumstances.

THE COURT: Isn't it your contention that there are no circumstances under which persons may be escorted out of Jersey City?

MR. ERNST: That's right, your Honor.

THE COURT: That being so, I don't think any further inquiry is necessary.

MR. MATTHEWS: Your Honor please, I take it that that ruling means the inquiry that might later be addressed by Mr. Hamill or his associates and assistants as to the circumstances would be also barred.

THE COURT: Oh, I think so.

MR. HAMILL: I think he should be permitted to explain the circumstances.

MR. MATTHEWS: Just a minute. In order that your Honor——

MR. HAMILL: No harm in having our opinions on record.

THE COURT: Yes, go ahead.

MR. MATTHEWS: Now, may I have read to you the question which the Mayor answered yes so as to show you that if your Honor ruled that way it would bar me from asking him questions on cross-examination.

THE COURT: We had better have the question.

MR. MATTHEWS: Yes; because it is a rather important one, it leaves an isolated question in the record. One could make much of that brief.

(The reported re-read questions and answers as follows: "Is there any circumstances at all, don't tell me the circumstances, just is there any, yes or no, when you claim that the police have the power to take a human being in Jersey City and remove him out of Jersey City.

"A. Yes, sir.

"Q. Is there?

"A. There is.

"Q. That's the answer.")

MR. MATTHEWS: Your Honor, there I would have to cross-examine, of course.

THE COURT: Well, I understood from a previous answer from the witness that that circumstance, which is not answered as to that question, is for their own safety; is that correct?

MR. MATTHEWS: Well, that would be an answer.

THE COURT: I mean it has been said by both the witness and Inspector Casey.

MR. MATTHEWS: But you see, your Honor please, in judging the Mayor's testimony, of course you cannot take Commissioner Casey.

THE COURT: But I think the Mayor also has said that, is that not correct?

MR. MATTHEWS: I think so. And if your Honor understands that the record shows that the Mayor said he would take a person out from the danger zone or remove him where it was a question of his life or personal safety, then I won't have to ask any further question on that.

THE COURT: Is that the record?

MR. ERNST: No, your Honor, I have not talked about danger zones at all.

THE COURT: No, no, out of the city

MR. ERNST: Out of the city, so we are not talking about danger zones.

THE COURT: As I understand it—don't let me, of course, put a legal position in your month, Mr. Ernst, so correct me right away if I am wrong—as I understand it plaintiffs' position is that there are no circumstances which justify the removal of a human being from the municipal limits of Jersey City by force or persuasion—well, leave out "persuasion"—by force.

MR. ERNST: By the governing authorities. That is my position, and I understand that the Mayor has said that there are some circumstances where such steps can be taken.

THE COURT: Yes.

MR. MATTHEWS: And my position is that I want that explained on cross-examination.

THE COURT: I think he has said that the circumstances are personal safety.

MR. MATTHEWS: Where the person's life is in danger.

THE COURT: Let us say personal safety. Do you want to limit it?

MR. MATTHEWS: No, I don't want to limit it, I want the facts in the record, where his life would be in danger by his remaining in any proximity.

THE COURT: Perhaps we could save time by your asking the Mayor what the circumstances are.

MR. ERNST: No, your Honor please. Then in interpreting the word "safety" it must be in relation to the power of the police of the community to procure him safety. It also raises the question whether instead of getting him to this hypothetical safety by removal they couldn't get him to safety by another removal, to wit, to a police station.

THE COURT: Well, I understood your position to be that the removal, if any, must be by way of arrest, is that your position?

MR. ERNST: No, there can be no removal out of the city.

THE COURT: That is what I understood.

MR. ERNST: The removal from the particular situs that the man holds could be by means of arrest and he could be taken to a place of incarceration.

MR. MATTHEWS: We are not going to bother about what he contends but we don't want this record barred from cross-examination because the Mayor's contention is that when a person is removed either to another part of the city or out of the city——

THE COURT: Or out of the municipal limits.

MR. MATTHEWS: —or out of the municipal limits, then it is only where the man's life is in danger, and to do otherwise would not be protecting him.

THE COURT: That is correct. I think we understand it.

MR. MATTHEWS: All right, your Honor.

MR. ERNST: Then I take it, because this is an important issue in this respect——

THE COURT: It certainly is.

MR. ERNST: Then I take it that the position of Jersey City enforcement agents is that they have the power to remove outside of the city limits for the purposes specified by Mr. Matthews.

MR. MATTHEWS: I am not testifying; I would be glad to take the stand and testify if you want me to.

MR. ERNST: No, I understand that that is the position now taken by the witness on the stand.

MR. MATTHEWS: He hasn't even quoted me correctly.

MR. ERNST: What is the use of our talking if it is for nothing?

MR. MATTHEWS: What is the use of your talking?

THE COURT: If the position of Jersey City is one way and that position, in my humble view, is wrong legally, of course I will have to enjoin that position, so therefore I think I am entitled to know, maybe if not this minute, because maybe you want to give it some thought——

MR. ERNST: That will be given to you in the brief, what we contend.

THE COURT: Yes, but we have to base the proof on evidence.

MR. MATTHEWS: Yes, that is why I say I want to cross-examine the Mayor where I can ask him leading questions, you know, better than trying to get it on direct.

THE COURT: Proceed then.

MR. ERNST: Your Honor please, do I take it that you are going to open the door to cross-examination indicating that the Mayor's answer is to be qualified?

THE COURT: I am going to permit it only for the purpose of his stating his legal position so that I can agree with it or disagree with it as the case may be.

By MR. ERNST:

Q. I would like to ask the Mayor one further question on the subject at this time.

MR. ERNST: May I first say for the record that all of these phrases about murder and personal safety, etc., used by the counsel for Mr. Hague and the defendants in no way implies any admission on our part that as to the evidence heretofore produced or hereafter produced such factors existed.

THE COURT: No, no, the evidence, of course, I will have to analyze.

MR. MATTHEWS: We don't stipulate any evidence.

Q. May I just ask one other question on the subject. Can you tell me under what statute or ordinance or portion of the state constitution or United States Constitution you claim the right to so escort people out of Jersey City?

MR. MATTHEWS: I object.

Q. Just does he know of any.

MR. MATTHEWS: I object, that would be construing the ordinance, calling for a conclusion of law from him and Mr. Hamill is ready to take the witness stand on

that; he has drafted the ordinances and the state law shall be interpreted by the court.

THE COURT: Yes, I think that is true. I think that is a proper question, Mr. Ernst but I think it should be directed to the legal department.

MR. ERNST: No, all I want to know is whether the chief executive of the city knows of a law; then we can address ourselves to the attorneys.

THE COURT: Just answer that yes or no.

Q. Do you know of any law under which escorting of human beings out of Jersey City is permitted, do you know of any law?

THE COURT: You mean written law.

A. Well, there is plenty of law, your Honor, to give the police authorities the right to escort anyone to a place of safety. You are asking out of Jersey City. You are saying the only place we can escort them is to a police station. I disagree with you on that and have always disagreed with you.

Q. Mayor, can you now refer to any written law upon which you rely for that authority?

A. Why, the mere creation of a police department, Counselor, is sufficient law to give authorities the right to escort people to safety.

Q. And so you say that the law creating the police department of Jersey City gives that power?

A. By all means gives them power to, as I said, safeguard lives and property.

Q. Mayor, I want to talk to you a moment about this question of taking people out of the city, not from the point of view of law,—that we will take up with counsel, from the point of view of its relations to what you call Americanism. The first question is do you know of any other city in the United States which escorts people out of that city for any purpose whatsoever?

A. I know where they have done it in New York, to escort them to a place of safety; I don't know whether that extended beyond the outskirts of the city limits.

Q. You don't know of any case where New York City escorted people out of New York City into Jersey City, do you?

A. No.

Q. Now, Mayor, just think with me on this subject. What if Mayor LaGuardia and the council should adopt your position and escort people they thought undesirable and put them over to New Jersey and what if by chance you agreed with the Mayor of New York City and you escorted them back, would not the result be that those people would be living forever on the ferry boat?

MR. MATTHEWS: I object to that question, if your Honor please, totally irrelevant to this issue, hypothetical and irrelevant besides.

THE COURT: Yes, I sustain the objection.

MR. ERNST: I will take an exception, your Honor, please, on the record.

(Which exception is hereby allowed and sealed accordingly.) (Sealed)

A. Shall I answer that question?

MR. MATTHEWS: No, no, it wasn't asked to be answered.

Q. Does the witness care to answer it?

A. No.

MR. MATTHEWS: It wasn't asked to be answered.

A. I don't object to answering it.

Q. I know you don't, Mayor. Mr. Hague, have you ever read the constitution or by-laws or any CIO union?

MR. MATTHEWS: I object as irrelevant to this issue.

MR. ERNST: You cannot tell whether it is irrelevant until we go further.

THE COURT: Answer yes or no, will you, please.

A. No, I have never.

Q. Have you ever read the constitution or by-laws of any union affiliated with the American Federation of Labor?

A. No, sir.

Q. Will you name me please ten or let's say twelve CIO leaders who you have said were undesirables, not the rank and file, the leaders; can you name me ten or twelve?

A. Well, John Brophy and all his assistants.

Q. Name me another one besides John Brophy.

A. Well, I don't know the names, I have read about Mr. Lewis' utterance condemning John Brophy and his assistants, who is now taking a very prominent part in the leadership of the CIO.

Q. Now, Mayor, you know that isn't what I asked you; I asked you to name me some names.

Q. I am naming you John Brophy and all his assistants, that's all I know.

Q. Can you name me another name?

MR. MATTHEWS: Well, he has already named Bridges in this case.

MR. ERNST: If your Honor will please ask counsel not to prompt the witness. This witness is a competent human being and does not have to have words put in his mouth by Mr. Matthews.

Q. Do you know another one besides Mr. Bridges supplied by your counsel?

A. Well, I forgot about Harry.

Q. All right, now, name me another one.

A. Curran.

Q. Who?

A. Curran.

Q. Curran.

A. Who was in the Communist parade with a big banner across his shoulder.

Q. I didn't ask you that either, did I?

A. Well, we might as well——

Q. That's just some bull on your part.

A. We might as well get that in.

Q. Now, Mayor; name your fourth.

THE COURT: What is the first name? May we have that in the record?

THE WITNESS: I don't know the first name. William, I think.

MR. MATTHEWS: I can get it for you, Mayor.

THE COURT: Just so we have it on the record.

MR. MATTHEWS: C-u-r-r-a-n, was it?

THE WITNESS: Yes. He is Bridges' representative in New York.

MR. MATTHEWS: It is Joseph, yes.

THE COURT: All right.

MR. MATTHEWS: Joseph Curran.

Q. Can you name me another one?

A. Not off hand, Counselor. I may think of one later.

MR. MATTHEWS: Could I help the witness?

MR. ERNST: No, thank you.

MR. MATTHEWS: You are welcome.

MR. ERNST: I just wanted to find out whether this witness knew. I know, sir, that you can read.

MR. MATTHEWS: I am glad that you know that.

MR. ERNST: All right.

MR. MATTHEWS: You don't seem to manifest much knowledge of anything else.

MR. ERNST: Now, if your Honor please, may I please not be interrupted——

THE COURT: Ten minutes' recess.

(At this point a short recess was taken.)

12:25 p. m.

(The clerk made the following announcement):

THE CLERK: The Court wishes me to announce that because of an engagement that Mr. Matthews has in his office, not in relation to this case, the Court will now take a recess until a quarter of two.

MR. MATTHEWS: Will you thank the Court for me?

MR. ERNST: And thank Mr. Ernst for consenting.

MR. MATTHEWS: Thank you, Mr. Ernst, for consenting. (Noon recess.)

AFTERNOON SESSION.

FRANK HAGUE, resumed the stnad.

DIRECT EXAMINATION (continued).

By MR. ERNST:

MR. ERNST: All right, your Honor.

THE COURT: Yes, certainly.

Q. Mayor, did you find out if Mrs. Rickett, wife of a reporter on the Jersey *Journal* is in the employ of the county or state?

A. Yes, sir.

Q. What job has she got?

A. She is investigator of the Common Pleas Court of Hudson County. She was appointed by four judges, Counselor, two Democrats and two Republicans. It is a bipartisan court and they appointed her, four votes, appointed her unanimously as an investigator, my office informs me.

Q. Thank you. Mayor, in coming to a decision as to whether or not people are offensive as speakers to the people of Jersey City, I want to ask you if you take into consideration comments of people holding high official positions in the State of New Jersey to the effect that certain people are not offensive even though you may think so?

A. I cannot follow you, Counselor. You say comments of certain high officials in New Jersey.

Q. Yes, do you take those into consideration if they disagree with you?

A. Oh, you mean public comments?

Q. Yes, if they disagree with you?

A. If they disagree with me?

Q. Yes. Do you take them into consideration?

A. Oh, yes, I take all comments into consideration.

Q. I want to read you a comment which appeared around May 27, 1938, being a statement purporting to issue from Harry I. Finley, F-i-n-l-e-y, secretary to United States Senator William H. Smathers, Senator from the State of New Jersey, and then I will ask you one or two brief questions.

MR. MATTHEWS: I object to that, if your Honor please.

THE COURT: Is that a written statement? May I see it, Mr. Ernst?

MR. ERNST: I can locate the issue of the newspaper from which this was copied, if necessary (handing to the court).

THE COURT: No, I won't permit that.

MR. ERNST: I would like to state my purpose and then take my exception.

THE COURT: No, I won't even permit that. If you want to have that, you will have to call him.

MR. ERNST: If what?

THE COURT: You will have to call him.

MR. ERNST: Call him?

THE COURT: Yes. You may have an exception.

MR. ERNST: Yes, I would like to take an exception on the ground that a quote published in a newspaper on the subject of for or against——

MR. MATTHEWS: Now, the court——

MR. ERNST:—the Mayor's position should be admitted.

THE COURT: Mr. Ernst is not going to quote it, Mr. Matthews.

MR. ERNST: What?

THE COURT: I said to Mr. Matthews you were not going to quote it after my ruling; you don't need to worry.

MR. ERNST: Not what?

THE COURT: That you were not going to quote it after my ruling.

MR. ERNST: Oh, no, of course not.

MR. MATTHEWS: All right, I withdraw it.

MR. ERNST: May I repeat again without interruption that I want to have it noted on the record that I wanted to introduce the statement on the theory that statements for or against the Mayor's position in regard to the denial of civil liberties was material to the issue on the ground of the definition of Americanism and on the ground of discovering the basis for the Mayor's determination in particular cases.

THE COURT: My ruling is the persons who made the statements will have to be called.

MR. ERNST: May I take an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Mayor, there were various meetings and parades at the Armory, Chamber of Commerce, public square meetings, particularly those referred to in connection with the leadership of Mr. Kelly. I want to ask you whether you contributed any money whatsoever for any of those gatherings, whether for flags, billboards, notices, cards or any other of the instrumentalities used to organize the protests.

MR. MATTHEWS: I object as immaterial, whether he did or not, or irrelevant.

THE COURT: I will allow that.

MR. MATTHEWS: Your Honor will allow an exception?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. Offhanded I cannot just exactly say, I think I contributed, Counselor, offhanded; if you will allow me I could get you the amounts.

Q. Would you know approximately the amounts?

A. No, it is several hundred dollars, I think, more or less, not much.

Q. Do you know whether or not the billboards, postal cards or other printed material used in connection with any of those protests were paid for and financed by any governmental budget, whether city or otherwise, in part or in total?

A. I don't think so, I don't know; I don't think so.

Q. Mayor, may I ask you to think again, specifically in connection with the printing of the billboard protests——

A. What billboards are you referring to?

Q. There were billboards about Americanism, Norman Thomas protests that were on the highway; isn't it a fact that those billboard protests in support of you and against the people who wanted to speak in Jersey City, weren't they paid for out of governmental funds in part?

A. I don't think so.

Q. You don't think so.

A. I think you will find that those are subscriptions that Hugh Kelly has been gathering and collecting.

Q. Mayor, you would deny a permit to speak solely because the speaker intended to preach revolution, is that right?

A. Did I deny it, you say?

Q. You would, you would deny a permit solely on the grounds if you thought that a man was going to preach revolution?

A. Oh, I would deny that, yes.

Q. Mayor, you would deny a permit to speak solely on the ground that the man is a member or a high official, put it that way, and known to be such, of the Communist Party?

A. I would object to that, yes.

Q. Mayor, for years, Jersey City allowed, as one of the exhibits shows, meetings of the Communist Party, is that right?

A. Yes.

Q. And as I understand it, within the last few months, or a year, there has been what you call trouble, and from now on there will no more such permits granted?

A. Well, I wouldn't say that. That depends upon the temperament of the people, Counselor. Of course, our condition as it exists today is not so hot to permit any of these people to come in. We can't guarantee them protection, with the attitude of the people, because of this vast publicity.

Q. Now, Mayor, how would an applicant, whom you term undesirable, ascertain whether or not you have come to the conclusion that the temper of the people is such that they wouldn't be offended if he came in to speak?

A. Well, it is a simple matter for us to determine who would be undesirable.

Q. All right.

A. From the expressions. Various civic and fraternal orders and the veterans, as they have expressed themselves in the past. Now, I assume that if there is a protest filed with me or filed with the Director of Public Safety today,

six months from now that same protest still remains until changed by those who file it.

Q. So that an applicant among the so-called undesirable list, really, in order to find out when he may become a desirable, should file applications every day?

A. Oh no.

Q. Or every week?

A. Oh no, I wouldn't say that.

Q. Well, Mayor, will you advise the public generally when you have made up your mind that certain people whom you now think are undesirable become desirable?

MR. MATTHEWS: I object to that question, if your Honor pleases.

THE COURT: I don't quite understand it. I heard it but I didn't quite understand it.

A. That would be rather hard.

(Pending question read by the reporter.)

MR. MATTHEWS: That is incompetent.

THE COURT: No, I will sustain the objection.

THE WITNESS: Has the question been allowed?

THE COURT: No, I sustained the objection.

MR. ERNST: No, the Judge sustained an objection.

THE WITNESS: Oh, pardon me.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. Mayor, should there be protests during the period of the coming election period against the right of the Socialist Party to hold meetings, you will bow to the protests?

MR. MATTHEWS: I object to that question as incompetent, if your Honor pleases, calling for what the

Mayor will do with reference to the Socialists, who are not a party to this issue.

THE COURT: How does the future action, Mr. Ernst, bear upon this current, present issue?

MR. ERNST: If your Honor please, if I may answer your question——

THE COURT: Yes.

MR. ERNST: —without interruption, I am in this position: as I understand the witness, and I doubt whether he has made himself clear or whether I have understood him, he has testified that certain people are undesirables; he has described in various ways this test as to their undesirability, and then he says that as long as those protests against those undesirables stand on the record, he will assume that they continue as protests, and, as I understand him, he says as long as there are these protests, they can't speak.

Now, I doubt if the Mayor meant that exactly, and if you want to have it read back, I can locate the question that creates the quandary.

THE COURT: I thought his position was—let me state what I thought it was, and then you can correct it, if it is not correct—I thought his position was that as long as the temper of the people, I thought those were the words he used, led him to believe that there would be violence if these people spoke, that he would forbid their speaking. I thought that was his position.

MR. MATTHEWS: Yes, your Honor.

THE COURT: Is that accurate?

THE WITNESS: Yes,

MR. MATTHEWS: Your Honor please, there is the answer of the Mayor's——

THE WITNESS: What I meant, your Honor, to the counsel's last question was that where a group of men

and women—where there is an uprising in the form of a protest, if they file petitions with the governing body, that that protest about a certain condition, let us say about some condition of a gas station or some condition, we always assume, Counselor, that that protest still remains unless those folks come down and say that they have withdrawn their opposition. That is the rule of the governing body.

Q. Now, Mayor——

A. (Continuing.) The zoning condition, now we always have assumed that where a group of taxpayers have formed themselves into some society and they protest, well, now, not as long as that society allows that protest to remain on file shall that gas station or that zoning ordinance be complied with.

Q. And you treat the applications for the right of meetings exactly as the zoning protests?

A. That is the rule, if a thousand men or a thousand women assemble and protest about a condition we assume that that condition, that they still remain hostile without they notify us by writing; otherwise, Counselor, they would be meeting every week.

Q. Mayor, assume that a thousand working people in the City of Jersey City file a protest against some member of the Chamber of Commerce getting a permit, do you mean to say that you would then not allow the member of the Chamber of Commerce to speak just because a thousand people protested?

A. Well, that entirely depends, Counselor. Of course, I cannot see how you can single out a member of the Chamber of Commerce as against a hostile group that is attempting to overthrow the government. There is a vast difference between those two applications.

Q. So that the question of the protest is not the important thing, is it?

A. A question of the character of those who are making the application for the meeting.

Q. If Norman Thomas this afternoon, for example, files an application now, to get the issue clarified, in due time, for the right to speak somewhere in Jersey City during the next campaign on behalf of the Socialist ticket, what is your procedure, do you go to the protestants and ask them if they withdraw or does he have to assume that the protests stand?

A. Norman Thomas, at the present time, in our estimation, has set himself up because of that picture that you refer to and his position at the May Day parade and his speech that was published in the *Times* has set himself up in such a position that the opposition will appear at all times when he makes his appearance, because they are treating him not as a Socialist orator but as a Communist.

Q. I understand, therefore, that the applications previously granted for meetings for Communists and Socialists and other undesirables——

A. There was no interruption, Counselor.

Q. No interruption at all?

A. No.

Q. And so I understand that you believe that there is a change in the position of those parties and groups during the last six or eight months.

A. Well, you are familiar with Norman Thomas speaking at that church hall in Jersey City, are you not?

Q. In a rough way I am.

A. During the center of all this controversy?

Q. Yes.

A. You see Norman Thomas injected himself into this picture. I feel that he should never have injected himself into it, because first I think he had no business into the picture and I think it was very foolish on his part to come into the picture, that this was a controversy between the CIO and the Civil Liberties. Now, the first thing I knew he made his application for the church hall; because it was indoors he was permitted and granted. There was no necessity of granting permission; he has under the law the right to talk there, which he did.

Q. He got into the hall?

A. He talked there and there was no interruption. Now, the next thing we heard of Mr. Thomas was after the Burkitt affair then he come over and the application was made by the Socialist Party and the Socialist Party received from the Director of Public Safety a communication denying the application. The following day the Director of Public Safety received a communication from the Socialist Party withdrawing the application and said in this letter that "Heretofore we were never denied a permit before."

Q. Mayor, the letter is in evidence and instead of your saying what it is we will have to let the Judge read it because you and I think it says two different things.

A. I am only giving you what I think.

Q. The thing will speak for itself. There is such a thing as irony in letters.

A. I am only saying that under ordinary conditions there should be no occasion for denying Mr. Thomas if it wasn't for the fact that he injected himself into the picture.

Q. But for the moment you are clear that the Socialist Party should not be allowed to speak in Jersey City?

A. You see, of course, Counselor, I am trying to clarify the situation as best I can; I am trying to show you that it is because of this disorder and all this——

Q. But for the moment to repeat my question you are of the opinion that the Socialist Party should not be allowed to have speakers in Jersey City?

A. Under the head of Mr. Thomas, no.

Q. Under the head of Mr. Thomas.

A. I think the same objection would be filed as heretofore because I think he has disqualified himself, Counselor, as a Socialist leader today, because of his activities in the Communist Party.

Q. As a matter of fact, don't you think you might leave it to the members of the Socialist Party to decide whether he has disqualified himself?

A. I am only discussing with you what I have observed myself from the newspaper photograph and his speech on May Day parade.

Q. Now, Mayor, you don't mean that all people who want to make important, fundamental changes in American life and in the American Constitution are undesirable; you don't mean that, do you?

A. Well, I don't get that question.

Q. Let me put it to you this way——

A. It depends entirely what is their attitude. I don't feel that any group of men who desires to change over forms of government in various cities and states—it depends entirely on the nation, as to how they approach that question. If they approach it with a red flag, I am opposed to it.

Q. What if they approach it peacefully, with any flag?

A. Well, you can't approach anything peacefully, Counselor, if you are opposed to the American form of government and to the overthrowing of it.

Q. That's right. Now, let's assume that a man approaches peacefully a fundamental change in the United States Constitution, a change that you might disagree with, he would be an undesirable?

A. Are you referring to any particular section of the Constitution or the entire Constitution?

Q. The entire Constitution.

A. Well, I have failed to find anyone who desires to do that other than a radical, undesirable man, person, who is——

Q. In other words,——

A. (Continuing.):—who apparently is dissatisfied with the American form of Government.

Q. So if a man wants to have an entire new Constitution written for the United States, the whole instrument, revamped, and even though he goes at it peacefully, do you think that is objectionable, not Americanism, and should be denied?

A. Well, Counselor, I would like to have what you term "peacefully"—I would like to have that interpreted.

Q. Yes.

MR. HERSHENSTEIN: He is answering you.

A. (Continuing.): I don't consider it peaceful——

MR. ERNST: No, he is going to ask me.

And I want you to answer him back.

A. (Continuing.): I don't consider peaceful, approach to a question with a dynamite bomb in one hand and a Red flag in the other.

Q. Now, let's assume a man has a flag of any kind in his hand and does nothing but talk, and never commits what the courts call an overt act. Does he have a right in Jersey City under that definition of peaceful, no overt act?

A. Counselor——

Q. To urge the complete rewriting of the Constitution of the United States? Hasn't he got that right?

MR. HERSHENSTEIN: You mean on the public streets or in halls?

A. Certainly, they have a right to urge complete——

Q. Rewriting of the Constitution?

A. (Continuing.):—rewriting of the Constitution, but it depends, Counselor, who these people are. If they were high-class citizens and they met in peaceful, orderly manner, why certainly they have perfect rights; but if prior to that they were advocating the overthrow of the government, they were dissatisfied with everything that America offered to them, why, of course, I don't assume they have any rights.

Q. You don't? All right.

A. Because they are dissatisfied with the form, to begin with.

Q. And you don't think that they have the right to urge peacefully the change in the form of government?

A. They have no right providing there is opposition and providing there is a great uprising against that type of preaching?

Q. Now,——

A. As a rule, the American people respond very rapidly.

THE COURT: I will have to ask an adjournment. It is not personal, it is the same source I spoke about this morning.

MR. ERNST: All right, sir.

(Short recess.)

Q. Mayor, if there is a picket line in front of a factory and the purpose of the picketing is to organize the plant, under what law have the police or any of the officials of Jersey City the right to interfere with the picket line if it is peaceful?

MR. MATTHEWS: I object to that as calling for a legal conclusion unless the Mayor would know the law.

MR. ERNST: I will change my question.

Q. Mayor, do you know of any ordinance or statute or law of the United States Congress which directly or indirectly gives to the police of Jersey City the power to act in any way whatsoever in connection with a picket line which is marching in numbers of only three, let us say, peacefully in front of a plant where the purpose of the picket line is to organize the factory which at that time is not organized?

MR. MATTHEWS: I object, if your Honor please, that question is too general. The Mayor yesterday testified to Vice-Chancellor Berry's decision, for instance. Now, that would be one phase of it. I think if the Mayor is going to be asked any question as to what the police policy is in reference to picketing it should be in the disjunctive. Vice-Chancellor Berry's opinion, as I read it, forbids picketing in certain instances.

THE COURT: Has that ever been appealed?

MR. MATTHEWS: No, no more than Vice-Chancellor Bigelow's; they are both of novel impression in the state.

MR. ERNST: Your Honor, please, I was referring specifically to whether the Mayor knew of an ordinance, statute of the state or statute of Congress in respect to the power——

A. In a recent case here in Newark, Counselor——

Q. I am asking about statutes; do you know of any statute or ordinance?

A. No, but in a recent Court of Errors decision it is a decided case, the Court of Appeals decided it was illegal to picket only where there is a strike, in the bakery case. It was a bakery.

Q. I know about it, Mayor.

A. Doesn't that apply to us?

Q. I just want to know if you know of any ordinance or statute, not cases.

A. Isn't that state law? Don't we have to abide by the Court of Appeals ruling?

Q. I am asking you if you know of a statute passed by the Legislature, or an ordinance, on the subject.

MR. MATTHEWS: I submit that is the only answer the Mayor could give.

THE COURT: Isn't there a state statute defining twelve paces?

MR. HAMILL: Ten paces, I think that is the law of 1928.

THE COURT: That is the only one I personally know of.

MR. HAMILL: To prevent mass picketing.

Q. Mayor, you may assume that the men were marching strictly in accordance with any pace law enacted by any legislative body in the city, county or state.

A. In the first place, Counselor——

Q. Do you know of any law?

A. Wait, now, I am giving you the law.

Q. No, do you know of a law?

A. Well, I am going to interpret the law.

Q. No.

A. Well, as we knew it.

Q. I will come to that next, Mayor.

A. What is the use of arguing?

Q. You either know of a statute or you don't.

MR. MATTHEWS: I submit all he knows is what the Court of Errors and Appeals has interpreted as the law. That is what he says.

MR. ERNST: Your Honor, may I address myself to you?

A. The rule of the department, Counselor, is that the police, on matters of that character where they necessarily become a nuisance and disturb the peace or interrupt people going in and out of that plant, that is unlawful in our state.

Q. Now, Mayor, may I refer again—I will repeat my question. Assuming there is no annoyance, assume there is no interference, assume that the men are marching, three of them only, peacefully, properly paced according to a state statute, do you know of any legislation ever enacted by the State of New Jersey or by the county boards or the city that gives the police the power to regulate such behavior on the part of the three people where the picket line is for the purpose of organizing an unorganized shop; do you know of any such law?

A. Yes.

Q. What is the law?

A. The law is this, that the owner of that plant, upon the filing of a complaint——

Q. Yes.

A. —the police immediately must inject themselves in and remove the opposition that has set themselves up to disturb the peace and quietness of that plant.

Q. And that is not under a statute, but under decisions of the court?

A. That's the act of protecting life and property.

Q. Yes.

A. That we proceed under.

Q. And so, as far as you know, you are proceeding in those cases under decisions of the court and under legislation, directly?

A. Counselor, it is the same as if at midnight four or five men is prowling in front of a home and the police is notified. Now what do they do? They go there and they remove those men.

"What are you doing here? Who are you? Do you live here?"

"No."

"Then you have got to move on."

Now, that's exactly the law.

Q. Now, Mayor, I didn't ask you anything about that. I asked you a simple question. You understood it fully. I said in effect, and I think I said honestly what I thought you were saying, that you were proceeding under court decisions and not under state statutes or city ordinances.

MR. MATTHEWS: He hasn't said he knows of any state statutes, or he doesn't, and I suppose he presumes, your Honor, that the court must have decided according to the law of the state; therefore the opinion of the Vice-Chancellor must be predicated upon the law of the state.

MR. ERNST: If I may explain the reason without interruption, I would like to explain what I want to get at. Our position is that as a matter of law the police have no power whatsoever, where there is peaceful picketing without disturbance, for the purpose of organizing an unorganized plant, to interfere. But an employer in this state may, under certain circumstances, go to work to get an injunction. That injunctive relief runs to that employer in the particular case,

but the legislative powers of the city and state, as we have searched them, have never vested the power in the police where there is peaceful picketing to organize the unorganized, to interfere with peaceful walking on the street.

THE WITNESS: I think you are in error.

Q. Now,——

THE WITNESS:—entirely in error.

Q. Mayor, I would like you to tell me if I am in error by referring to a statute of the state or an ordinance of the city that gives police that power.

MR. MATTHEWS: That was my objection.

A. Why is it we have been sustained in every court action that we have been called into, Counselor, by the courts?

Q. What?

A. If there is no statute?

Q. What?

THE COURT: I don't want to have a legal argument too much, Mr. Ernst——

MR. ERNST: Yes.

THE COURT:—but isn't it a fact that picketing on a person's premises is permitted—I mean on the city streets, is subject to regulation, unless there is an affirmative law to the contrary, and that the fact is that New Jersey has so far not by its highest courts declared itself on the question of whether you can picket in order to organize? In other words, New Jersey has its law undeclared, whereas the Norris-LaGuardia Act, or the Labor Relations Act, has declared it for interstate commerce. Isn't that a fact?

MR. ERNST: Well, I don't quite see it that way, and I don't want to press the legal argument now, but

what I wanted to have the record show in part was, any statute or ordinance on the subject that the Mayor could refer to?

THE COURT: I don't think there are any. I don't know whether he can refer to them or not.

MR. ERNST: That is my question. Now, as a matter of law, we can eventually argue——

THE COURT: Yes.

MR. ERNST: —whether in the absence of statute the police have any power where it is peaceful. That is the legal issue we are going to differ on.

THE COURT: Yes.

MR. ERNST: May I go on with my examination?

THE COURT: You may.

Q. Mayor, if the evidence shows to the satisfaction of the courts that your police, since the Griffin decision, have taken away circulars and pamphlets from people on the streets of Jersey City, you will agree that the police ought to change their practices and ought to be stopped?

A. We'l, now, Counselor—yes, I agree with that, but can I just make a little explanation about what had occurred at Journal Square——

Q. No.

A. —that you are referring to?

Q. No, that Mr. Matthews can ask you. Now, Mayor——

A. Well, you are arguing about free speech, but you won't give me any free speech.

Q. A court of law, Mayor; it is different than Journal Square. Let me go to Journal Square and I will debate it with you.

MR. MATTHEWS: Oh, you can't go. I will debate it with you, though.

MR. ERNST: In Journal Square?

MR. MATTHEWS: Any place that you want.

MR. ERNST: Journal Square?

THE WITNESS: Wait a minute. Just a minute.

MR. MATTHEWS: Outside, because if I did, I would have to save your life.

MR. ERNST: Do you want me to be saved from Matthews, Mayor?

THE COURT: Do you want me to act as a referee?

THE WITNESS: I will relieve you of that, Judge, too.

Q. Mayor, shall I take him up and debate him in Journal Square?

A. I don't think so. Look out, now; you are taking a tough man.

Q. You can protect me if I come there, can't you, Mayor?

MR. MATTHEWS: Protect you there?

Q. Can't you, Mayor?

MR. MATTHEWS: I don't think the United States Army could protect you in Journal Square. You would be as welcome as a skunk at a lawn party over there.

Q. You will protect me if I come over in Journal Square, won't you?

A. No.

Q. You won't?

A. No.

Q. All right.

A. The whole country would turn out.

Q. Very flattering.

MR. MATTHEWS: No, that isn't flattering, Morris.

MR. ERNST: Well, I should think so.

Q. Mayor, you are disturbed about the fact that your duty primarily is to maintain peace and safety in the community?

A. (The witness nodded.)

MR. MATTHEWS: I object to the word "disturbed"—he isn't disturbed about it; he is concerned.

MR. ERNST: He is concerned with it.

Q. Is that right, Mayor?

A. (The witness nodded.)

Q. Now, Mr. Mayor, you are of the opinion that that peace and security cannot be maintained if certain people whom you termed undesirables, are permitted to come into Jersey City because they would offend, as you used the word "offend," the people of Jersey City?

A. (The witness nodded.)

Q. The answer is yes?

A. It would disturb them. It depends upon the people.

Q. Yes, certain people. Now, Mayor, isn't it a fact that the people of Jersey City might also be disturbed and offended by the passing around of the same ideas that the speakers would use if instead of in oral form, by word of mouth at a meeting, it was passed in printed form? That could also offend the people of Jersey City, couldn't it?

A. Oh, yes. It depends upon what is printed.

Q. Now, let's assume that the undesirables who you think will offend the people of Jersey city put their words into printed form and passed them around in Jersey City by the thousands, that might create a real disturbance?

A. No, I think they would be a little more safeguarded in putting it in print than what they would utter upon the public platform.

Q. You think they wouldn't say the same things?

A. I think they would frame it in such a way that it would be acceptable.

Q. Now, Mayor, when you deny a permit for a man to speak you don't know what he is going to say, do you?

A. No. Of course, we know generally what the subject is, as to who he represents and what cause he is speaking for; we know then just what the nature of it is.

Q. Now, if these same people, instead of applying for a permit where you know the general purpose of the cause and the group that they are affiliated with, instead of getting a permit to speak what is on their minds, should go ahead and put in it printed form, isn't it possible the safety and calm and comfortable living of the people of Jersey City from your point of view might be equally disturbed?

A. Not necessarily, Counselor.

Q. Not necessarily; isn't it possible?

MR. MATTHEWS: Possibilities aren't admissible.

A. In the distribution of circulars, they are distributed in the one place; they don't take them, they pass them by; secondly, the newspapers don't pass comment on the distribution of circulars, they only comment upon the appearance of certain people, and it seems, from their articles after they publish them, the movement takes place and up goes the uprising and from there she starts.

Q. Now, let's assume the Communist Party, for example, instead of applying for a permit to speak had printed its documents, its position, whatever it is, and passed them around, they could lead to some disturbance in Jersey City?

A. It would, it would lead to disturbance on the premises where they were being distributed because they would resent it, people as they would be handed these circulars would resent it, and on their way back, if they tried to give them another, would say, "Get out of here" and of course that leads to trouble.

Q. And there would be protests filed with you?

A. That has happened, that is exactly what has happened?

Q. There would be protests filed with you?

A. There would be protests filed with the officer on post.

Q. And eventually there would be a mass protest filed with you?

A. There would be—there would be a lot of complaints filed with the police and eventually it would reach me.

Q. If you had a number of those complaints and protests you would feel it your duty to stop this process of handing things around in printed form that offends the people of Jersey City?

A. Not under the present law, we would try to regulate it, we wouldn't stop it; if the people was distributing the circulars we would try to remove them if they was obnoxious and was causing disorderly scenes and insulting people.

Q. Let's assume that you get thousands of protests, somebody announces he is going to distribute a lot of material, a group that you think is clearly undesirable, a group that you think offends the people of Jersey City, they announce that they are going to distribute pamphlets all over Jersey City and you get a copy of it——

A. And they were becoming a nuisance?

Q. No—wouldn't you even before it became a nuisance, wouldn't you think it wise to try to stop the distribution?

MR. MATTHEWS: I object, that has no relevancy to this issue; that is not the issue here. There is no evidence in this case of thousands of people peacefully giving innocuous circulars. The only testimony about thousands of people was the threatened invasion by Carney that they were going to bring.

THE COURT: Wasn't the word "thousands" used?

(Question repeated by the reporter as follows:

"Let's assume that you get thousands of protests, somebody announces he is going to distribute a lot of material, a group that you think is clearly undesirable, a group that you think offends the people of Jersey City, they announce that they are going to distribute pamphlets all over Jersey City and you get a copy of it——")

THE COURT: You may answer.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly. (Sealed)

MR. ERNST: You have ruled, your Honor, that he may answer?

THE COURT: Yes.

Q. Would you try to stop that?

A. Would I stop that distribution of circulars under those circumstances?

Q. Yes, under those circumstances.

A. I presume that would lead to a complaint which would find itself into the disorderly conduct and from there we would have to make an arrest.

Q. But you would make no effort to stop it in advance?

A. If it become disorderly enough.

Q. But in advance you wouldn't try to stop it?

A. Not in advance of disorder, no.

Q. Now, Mayor, just two other questions, unless we get into difficulties between us.

A. Is that all then, those two?

Q. Unless you make me ask them in four forms, very simple. Among the members, the leaders of the American Labor Party, whom you have termed in general terms as undesirable, I find the name of Fiorello LaGuardia, Mayor of the City of New York, and I ask you whether you mean to imply, as you intimated the other day, that the leaders of the American Labor Party, as well as the leaders of the CIO and the ACLU, are undesirable, would offend the people of the city and should not be allowed the right to speak.

MR. MATTHEWS: I object.

A. The Mayor is not a leader, the Mayor is a member of your party; he enrolled as a member. Do I understand that—not as a leader.

Q. Well, you don't enroll as a leader, I take it; you are elected in New York as a leader.

A. No, no, now, he enrolled in the Labor Party; is the newspaper comment correct?

Q. I am saying to you that he is a leader of the American Labor Party.

A. Well, I am saying to you that the paper informed me by the news article that he had enrolled.

Q. That's right. Now, let's assume that he is enrolled, and in addition, event he is one of the leaders, what is your answer to the question?

MR. MATTHEWS: I object as irrelevant to this issue. I don't think he should be called upon to characterize Mayor LaGuardia's politics because as I remember Mayor LaGuardia's politics he has four or five different parties.

MR. ERNST: I will accept the characterization by Mr. Hague's counsel.

THE COURT: He seems to be fairly successful.

MR. MATTHEWS: Yes, he is getting along pretty well, Fiorello is.

Q. One other question. One other question. That's grand. I understand, Mayor, that your philosophy of government is that if the majority of the people in your community, as your appraise their desires——

A. Yes, sir.

Q. —find a person offensive to them, somebody of a minority group, you protect and respect the wishes of the majority of the people?

A. Well, now, I don't get that, Counselor.

Q. Let me put it to you this way——

A. Will you clear that?

Q. Will you let me, because I hope it is my last question, state it in a form so that you can answer it fully.

As I understand your position from the record, if you find that a majority of the people, a substantial number of the people of the community object to the presentation of a point of view of somebody who is in the minority, a point of view that offends the majority of the people——

A. Are you referring to the local situation?

Q. Yes, the local situation. You then respect the wishes of what you sense to be the majority and you, in response to their protests, indicate that the people against whom they are protesting should not be allowed to come in and speak?

MR. MATTHEWS: Now, just a minute.

Q. Let me just go on and get my question; I think it would simply matters.

MR. MATTHEWS: It is a very long question.

Q. What I am getting at, the basic thing that worries me about the whole case——

MR. MATTHEWS: I don't want him to be worried.

Q. —concerns me for America——

MR. MATTHEWS: What America, North or South?

MR. ERNST: Your Honor please, may I continue without interruptions?

MR. MATTHEWS: Excuse me, Morris.

MR. ERNST: A court of law, I thought.

MR. MATTHEWS: New Jersey.

Q. I am very serious, Mayor, and you will have no difficulty in understanding me if your counsel won't interrupt me.

A. I would like to answer your question.

Q. He won't let you answer it.

A. As you have framed it up, because it treats with a minority.

Q. May we start in over again? Thanks to your counsel.

MR. MATTHEWS: You are welcome.

A. I know your question, Counsel.

Q. No, because I haven't even touched the question, I am just getting the premise, if Mr. Matthews has patience to ask him questions later.

MR. MATTHEWS: Patience!

Q. (Continuing.) As I understand your position, it was if a substantial number of the people in the community where you govern protest against any one of a group of people whom you term undesirable and you honestly believe they are undesirable, you give weight to those protests; you have said you don't want to offend the decent people as you see it in the community, you say it would offend that great body of people, as you sense it, in the community if these undesirables were allowed to come in and speak at street corners. Now, sir, if you prefer me to ask in detailed questions I will but I think you will get the point and then you can answer it. You and I are both members of great minority religious groups in the United States.

MR. MATTHEWS: I object.

Q. Just let me finish my question; I will tie it up.

THE COURT: Leave out the religious minority groups.

Q. Let's be frank in America; one of the things in the Constitution is the guarantee of it and I must mention it, your Honor—you can strike out the whole question if you see fit—one of the distinctions between the United States and Russia and the dictatorships of the world is religious freedom. You and I know that historically in this country there have been things like the Klan and the attacks on the Quakers before it. Now, this is the point of my question: If you as the mayor of a city, assuming complete integrity on your part, are permitted to use your judgment on the basis of protests as to what will offend and what people are allowed to speak or not, isn't there a tremendous danger to Americans that we will have a revival of mayors elsewhere in the country who will think that other minority groups than the ones that you are afraid of, that you worry about, are equally dangerous and they will put it not on the basis of the overthrow of government, they will put it on the basis

of the overthrow of the home or something else, won't they then logically have the right to follow Frank Hague in getting up in another city and saying "I don't mind the people who are going to preach revolution but I mind the people who worship certain gods and they are disruptive of America," and they have said it in our lifetime, Mayor Hague, "and I am not going to let them speak at meetings or worship as they see fit."

MR. MATTHEWS: I object to that question. That's incompetent.

MR. ERNST: I think the Mayor understands my concern.

MR. MATTHEWS: No, no.

Q. If you don't Mayor, I can amplify it. I have been perfectly honest with you. I think that the example of your philosophy of government is the denial of Americanism, because it will be followed God knows where, in violation of religious and economic and political freedom.

MR. MATTHEWS: I object to that question.

Q. Now, do you want to answer my question, Mayor?

THE COURT: Do you want to answer it?

MR. MATTHEWS: There is no need of answering such a question.

THE COURT: Well, wait a minute. Let's see whether your client wants to answer it or not.

MR. ERNST: If he wants to; I don't press him.

THE WITNESS: I will leave it to my counsel, Judge.

THE COURT: All right.

MR. ERNST: I won't press him, if it is a question he doesn't want to answer.

MR. MATTHEWS: It isn't a question of "he doesn't want to answer." The question is not a question; it is a speech; it is a cheap appeal.

THE COURT: Please, Mr. Matthews.

MR. MATTHEWS: Well now, your Honor, let's take what he said here. He speaks of himself as a minority group.

THE COURT: Well, don't do that if you don't mind.

MR. ERNST: You need not try to protect me, your Honor. It is only the dignity of the court. I take no exceptions to remarks of Mr. Matthews. The record will show the mood of Mr. Matthews.

MR. MATTHEWS: The dignity of the court is not enhanced by you, sir.

MR. ERNST: If your Honor please, does your objection—I take it you sustained the objection?

MR. MATTHEWS: I object.

THE COURT: I think legally speaking the objection is good.

MR. ERNST: I wanted to know, your Honor, so I won't waste the time of the Court, whether the objection is to the fundamental purport of the inquiry or whether I should cure it by breaking it up into twenty separate questions.

MR. MATTHEWS: Objected to as irrelevant and incompetent.

MR. ERNST: Do you think it goes basically——

MR. MATTHEWS: Irrelevant and incompetent.

MR. ERNST: I bow and take an exception if your Honor sustains the objection. I wanted to know whether the objection, your Honor, is sustained—I take it you sustained the objection in its form at least?

THE COURT: Well, I shall have to sustain it on technical grounds, anyway, I think.

MR. ERNST: Yes. May I ask the guidance of the Court, so as not to waste time, whether the objection is to the basic purport of my question, so that I could split it up into ten or fifteen separte ones easily, or whether it goes to the form. If it goes basically to the purport, all I will do is take an exception and turn over the witness to his counsel.

THE COURT: I would like to know the reason. Is your reason, Mr. Matthews——

MR. MATTHEWS: Because it is incompetent, sir.

THE COURT: Well, that is after all——

MR. MATTHEWS: Incompetent to this issue.

THE COURT: Will you read the question, so I can be sure.

MR. ERNST: When the qustion is read, may I ask that my introductory apology for the form of the question be read, because I wanted to get this issue before the Mayor, and instead of piecemeal I wanted to get in the whole proposition. The Mayor may wish to overrule his counsel or not.

MR. MATTHEWS: The Mayor is not taking any advice or wishes from you.

May I cross-examine?

THE COURT: No, wait until we got the question.

MR. ERNST: If your Honor please, we might save a moment's time. I have a request to make. I have one witness that I would like to ask two or three questions at most. It is Mr. Callahan, of the Catholic Worker Association, and I wondered whether counsel would consent to have him, or the witness would consent, to have this representative of the Catholic Worker go on for three questions?

MR. MATTHEWS: No, if your Honor please.

MR. ERNST: He has been here for two days. It is merely to identify the man he spoke to in Mr. Casey's office.

MR. MATTHEWS: Well, if that is the only question, do you identify such and such a person, I have no objection to that being asked. He may be sworn right now.

MR. ERNST: No, no identify him as to his return and tie it up with the other employees.

MR. MATTHEWS: No, I must object to that. I am entitled——

MR. ERNST: You will not do me the courtesy of that?

MR. MATTHEWS: It isn't a question of courtesy, Mr. Ernst. It is a question of examining the Mayor now, who is the Mayor of the city, and has been here for four days.

MR. ERNST: All right, that's all right, if you please.

THE COURT: Now, may I have the question?

(Pending question read by the reporter.)

THE COURT: I think there are parts of that question, Mr. Ernst, I would admit, but as a whole I won't permit it. There are parts of it that I think are admissible.

MR. MATTHEWS: I object as incompetent.

THE COURT: I sustain the objection therefor.

MR. ERNST: I take an exception.

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

MR. ERNST: Your client, your witness.

THE COURT: Do you want to adjourn now, Mr. Matthews, for ten minutes instead of at three o'clock?

MR. MATTHEWS: Yes, all right.

(Short recess.)

(After recess.)

MR. FRAZER: May I tender to the Court our felicitations upon the news which we have just heard of your Honor's confirmation to the Circuit Court of Appeals?

THE COURT: I thank you very much, Dean, and I again apologize for my repeated absences, but you understand them, I am sure.

MR. FRAZER: Yes indeed.

MARSHAL MCDERMITT: I don't think the audience heard a word of Mr. Frazer's address to you. Should they be advised?

THE COURT: I don't think so.

I suppose technically I ought to receive the designation right away, shouldn't I? Do you waive it?

MR. FRAZER: We will take the official report, sir.

MR. MATTHEWS: May I, too?

THE COURT: Indeed you may.

MR. ERNST: If your Honor please, I have a suggestion I would like to make leading to a motion which I think will save an endless amount of time. We have discussed with you heretofore our intention to move to quash various subpœnas that are outstanding. I should imagine that the examination of the Mayor will take the rest of the afternoon, and then maybe we will want him back tomorrow. I don't believe it will be any great inconvenience to the Mayor if we could argue the question of the subpœnas duces tecum now for this reason. In our opinion those subpœnas will have to be quashed.

Then, with all deceny to opposing counsel, they will have to have time to draft or endeavor to draft new subpœnas. The questions involved in the discussion as to the subpœnas duces tecum, which impinge directly on the defenses interposed in this action, will no doubt also be raised in connection with the cross-examination of Mayor Hague.

I should imagine that having delayed for one or two days already the matter of the motion on the subpœna, I now urge the Court to save us all time and confusion to dispense with that, which will be, I assume, entirely agreeable to the Mayor,—and he would probably have to come back anyway tomorrow and it will not put him out and may save an awful lot of time for everybody.

MR. MATTHEWS: We are not prepared to argue that this afternoon, your Honor, we haven't got our law arranged on it, it is not with me, it is at my office. More than that, I was going to suggest that a sitting down with counsel may lead to our agreeing on some general terms of the subpœna that can be changed, but the data that we want in accordance with the subpœna, if that is not agreeable, we would be glad to submit to the court with the reasons therefor. I would like now to continue with the cross-examination of the witness.

MR. ERNST: Your Honor, you will find that on the examination, the contours of the defense will have to be defined within the limitations of the questions which go to the subpœna. Now, as to sitting down with counsel, our position, not out of disrespect for Frank Hague but because of the treatment which we have received from Mr. Matthews in the case, does not prompt us to accept his kind offer and we will not sit down to tell him what kind of subpœna he can draw which would be acceptable.

THE COURT: Can I make this suggestion, that I shall have to get a designation which I will do overnight——

MR. MATTHEWS: A what, your Honor?

THE COURT: A designation to sit, which I will do overnight, from Judge Davis, as he is the presiding Judge, and would it be fair then to say that we could adjourn now?

MR. ERNST: And tomorrow morning we could argue the subpœna point and then go on with the Mayor when we are finished.

MR. MATTHEWS: I want to continue with the cross-examination of the Mayor.

THE COURT: Well, Mr. Ernst pointed that he thinks the cross-examination of the mayor might be shortened.

MR. MATTHEWS: Oh, that is not for him to say.

MR. ERNST: Your Honor please, not only shortened but the argument on the subpœna was set for two or three days ago, so obviously there can be no surprise, and I ask it as a matter of convenience in the entire trial.

MR. MATTHEWS: I submit that I ought to be allowed to continue with the cross-examination of the Mayor. I realize that they don't want me to ask the Mayor on cross-examination the questions that they refused to ask him when they were pleaded with by the Mayor to ask. Now, your Honor is perfectly completent to rule—the subpœnas have nothing to do with my cross-examination of the Mayor, he is their witness. I submit for the convenience of the court—I mean not the convenience, the designation situation, of course I wouldn't stand for a moment in the way of that; whatever your Honor wishes I am agreeable to.

THE COURT: I think I should have it; I didn't think it would be quite lucky to get it in advance.

MR. MATTHEWS: That's all right, Judge, but——

MR. ERNST: Can't we settle the question of the subpœnas this afternoon? I mean not settle them in argument but settle whether we will have an argument.

MR. MATTHEWS: I am perfectly willing so long as I am as detestable to Mr. Ernst as he visibly is to me, much less orally, I will be glad to have my confreres sit with him, because after all, Judge, I never seek the association of those that I don't like. In Christian charity, of course, he is my neighbor but glory be to God in Heaven, that covers a multitude of sins. I am perfectly willing he should confer with Jim Hamill and Ed O'Mara and Charlie Hershenstein, because after this case is over I shall have only a memory of him, like I have of others that I have met in court, something to be forgotten because it isn't worth being remembered.

THE COURT: Well, can't——.

MR. MATTHEWS: But the point is——

MR. ERNST: If your Honor please, I want to make sure this on the record. Have you got this on the record?

THE COURT: Oh, yes, everything said is taken down here.

MR. ERNST: It is on the record. I want it on the record.

MR. MATTHEWS: That's good. Then you can read it to your progeny.

MR. ERNST: The upper judges will read it.

MR. MATTHEWS: Yes, I will be glad to have the upper judges read it, if they don't know of you already;

but I think this country does since the trial began. But the point is this, that any argument on the subpœnas would interrupt the Mayor's cross-examination, and I am all ready for it; I could go on now. But under the circumstances I think we ought to adjourn now. As you say, I don't think I ought to be compelled——

THE COURT: Well, my suggestion then is, I think the subpœna argument, which, I agree with Mr. Ernst, is vital to the case ——

MR. ERNST: There is no question about that.

THE COURT: Because I think that my rulings there will have to shape what I think is a permissible defense——

MR. MATTHEWS: I am not interested in defense, I am only going to cross-examine a petitioner's witness.

THE COURT: Wait a minute, Mr. Matthews. Therefore may I suggest that we go on with the Mayor tomorrow and then—have you other witnesses? I saw Mr. Thomas in court.

MR. ERNST: No, we have one witness, Mr. Callahan, from the Catholic Worker.

THE COURT: And that's all?

MR. ERNST: And that will be all.

THE COURT: Well, then can't——

MR. ERNST: Assuming, however,—we had understood that the argument on the subpœnas would take place a few days ago.

THE COURT: Excuse me one minute. This will be the last time I shall interrupt you.

MR. ERNST: All right, we understand.

(Short recess was taken.)

THE COURT: I am wondering, couldn't we do this? Couldn't we have finished the complaintants' case and then immediately after that, Friday afternoon, if necessary Saturday morning,—well, it is probably too late in the summer for Saturday morning, isn't it? But anyway, right following this settle the subpœna issue?

MR. MATTHEWS: Why, I don't think I ought to be prevented from cross-examining——

THE COURT: No, after the cross-examination.

MR. HERSHENSTEIN: After the cross-examination.

MR. MATTHEWS: That is all right. I am perfectly willing, Judge Clark.

THE COURT: After the cross-examination.

MR. MATTHEWS: Yes.

THE COURT: Is that agreeable then?

MR. ERNST: Yes. I still think it would save a lot of time on the objections to cross-examination, which we can more than guess by the remarks of Mr. Hague's counsel, interpolated between my questions. You will have to in effect make the same determinations as on the subpœnas.

MR. MATTHEWS: Oh, that doesn't follow at all.

MR. ERNST: Now, moreover, your Honor——

THE COURT: I am inclined to that view myself, but I don't think——

MR. ERNST: That's why I thought we should have the argument on the subpœnas before.

THE COURT: I don't feel I can control counsel, that's all.

MR. ERNST: Yes. May I say also, so there will be no misunderstanding, and I was interrupted in the

middle of my answer, that the number of additional witnesses that we put on will also, of course, depend on the determination which underlies the questions of the subpœnas. For example,——

THE COURT: Oh, well then——

MR. ERNST: We are going to have to re-offer, of course, now, in view of the Mayor's statements and testimony, the testimony previously proffered in respect to the meeting in Mr. Egan's office in Newark, and the tie-up with the Hague group in Jersey City. Moreover——

MR. MATTHEWS: I object to all these statements.

MR. ERNST:—to the extent——

MR. MATTHEWS: If they have any more case, let them put it on.

MR. ERNST: That's right.

MR. MATTHEWS: Let them put on anything they want to. We are perfectly willing to meet it. This is a statement for the morning papers he is making now.

MR. ERNST: If your Honor please, may I finish?

THE COURT: Go ahead.

MR. MATTHEWS: No, I object to that.

MR. ERNST: I forgot to say originally without interruption——

MR. MATTHEWS: I object to that.

MR. ERNST: Moreover——

MR. MATTHEWS: I object to that.

MR. ERNST: Moreover, your Honor, the cross-examination will of necessity be limited to the confines of the defense permitted——

MR. MATTHEWS: Oh, it will be limited to the direct.

MR. ERNST: All right. There can be cross-examination of a direct, which stays within the confines of a defense, and which does not. An important thing for the orderly procedure in my opinion is to determine the confines of the defense. I assure you you will be faced, from the remarks made by Mr. Matthews heretofore, it is very evident, you will be faced immediately with the necessity of ruling on the confines of the defense.

MR. MATTHEWS: I will examine according to the direct testimony; I will cross-examine this witness. They offered him now; he is my witness now; and whatever I will do I will do according to the rules of evidence; you can be sure of that.

MR. ERNST: I didn't suggest that you wouldn't, Mr. Matthews, I merely suggested that it was expedient and an orderly process to have a determination on the subpœnas as we had agreed on for three days ago.

THE COURT: Of course, I think this, Mr. Matthews, the subpœnas, as I understand, from references to them, are rather all-inclusive.

MR. MATTHEWS: They are inclusive but they should bring here the records.

THE COURT: If they have to be answered they will take quite a bit of answering, I mean the production of documents.

MR. MATTHEWS: If they are competent subpœnas, your Honor, that's all right, I will stay here.

MR. ERNST: Your Honor, may I say this, because I think it will save endless time: In our opinion the subpœnas, and I do not intend to argue the subpœnas, the subpœnas on the face of them must be quashed. We will not then proffer to Mr. Matthews suggestions as to

what the subpœnas should contain, but then when he has prepared new subpœnas, after these must inevitably have to be quashed under the law, we will then have to argue the new subpœnas, and the point as to the extent of the subpœnas, but inevit v the issue will come down to the question of wha es of their defense do they rest on for admissi' ty.

MR. MATTHEWS: Oh, your Honor! Don't tell me how to try a case, a fellow like you.

MR. ERNST: I am addressing the Court, sir.

THE COURT: Mr. Matthews, please——

MR. MATTHEWS: Well, your Honor, he is virtually saying how I shall try my case and how I shall cross-examine my witness.

THE COURT: But then you retaliated with personal remarks.

MR. MATTHEWS: I know, your Honor, but it is tantalizing to have a man stand in front of these people and tell me what to do.

THE COURT: Sometimes it is tantalizing to me to have them here but I hope I control it.

MR. MATTHEWS: You have, sir, and I am grateful to you, I am sorry if I have offended. But the point is, your Honor please, give us credit for being able to cross-examine our own witness. They have made their bed by calling this witness, they will have to lie in it while I cross-examine them.

MR. ERNST: I am not objecting to the cross-examination. As a matter of fact, sir, I welcome it. But may I say, sir, we had other witnesses we intended to put on, Mr. Matthews has seen fit to subpœna them to come here; we will probably not put any of them on and let him put them on.

MR. MATTHEWS: That's fine, that's first rate.

MR. ERNST: There is no question of our not wanting him to cross-examine Mr. Hague.

THE COURT: Mr. Matthews, I think I shall have to insist that on Monday we argue the subpœnas because we must get that settled; otherwise we might be here all summer.

MR. MATTHEWS: I agree that we shall argue that on Monday.

(At this point an adjournment was taken to Friday, June 17, 1938, at 10.30 A. M.)

Friday, June 17, 1938.

Case continued.

Appearances as before.

THE COURT: Are you ready?

MR. MATTHEWS: Yes, your Honor. Good morning. May I proceed now, your Honor?

THE COURT: Yes, you certainly may.

FRANK HAGUE, resumed the stand.

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Mr. Mayor, at page 1223 and 1224 of your testimony you spoke of a threat by Harry Bridges ordering five hundred of his strong-arm men into Jersey City and you said "Bridges is a noted Communist," and also at page 1682 and page 1683 of your testimony you named Bridges as an undesirable CIO leader. Will you tell me on what you base your information as to Mr. Bridges?

MR. FRAZER: Now, just one moment. If this is offered as substantive testimony it is wholly objectionable.

THE COURT: If what is offered?

MR. FRAZER: If it is offered as substantive testimony.

THE COURT: What is offered, Dean?

MR. FRAZER: The evidence now sought to be elicited.

THE COURT: Is it some document, is that it?

MR. MATTHEWS: I am asking him the source of the information.

THE COURT: I say is it some document?

MR. MATTHEWS: Yes, sir.

THE COURT: Let me see the document.

MR. MATTHEWS: This is cross-examination and I have every testimonial record.

MR. MATTHEWS: This document is a national Republican document with quotations——

MR. FRAZER: Will you speak so I can hear you, Mr. Matthews?

MR. MATTHEWS: This document is a national Republican magazine document with quotations, New York *Times*, other newpapers, the Seattle *Post Intelligencer* and other data, to give the Court the reasons upon which Mayor Hague predicated his opinion briefly.

MR. FRAZER: You are merely trying to prove the Mayor's state of mind?

MR. MATTHEWS: I am trying to prove nothing by the Mayor; he is under cross-examination. I am cross-examining him on his exact testimonial statements with

reference to the page of the record. I won't use anything, your Honor, except what is consonant with his testimonial statement in the record, and I will give you the page of each bit of testimony that he gave.

THE COURT: Well, this seems to be a long article.

MR. MATTHEWS: No, you misunderstand me. I will mark the place for you, if you want me to, where I want to read.

THE COURT: Yes, but I want to know what the article is about.

MR. MATTHEWS: It is about Bridges, your Honor.

THE COURT: Wait a minute. I have got an even better one, I think.

MR. MATTHEWS: Well, maybe I will take your Honor's.

THE COURT: Yes. Have you seen mine (handing to Mr. Matthews)?

MR. MATTHEWS: No. About Bridges?

THE COURT: Yes, I know, but this is about all the same people.

MR. MATTHEWS: Now, if your Honor pleases, I just want to confront the Mayor with what he said, and, under cross-examination, ask him the questions that I am entitled to under cross-examination.

THE COURT: My pamphlet, which was sent to me anonymously, is by one Harrison Fargo McConnell, counsel for the Silver Shirt Legion of America, Incorporated.

In other words, Mr. Matthews, there are numerous publications, are there not, which give alleged references to Communists and that sort of thing?

MR. MATTHEWS: That isn't my purpose, Judge Clark. I want to give quotations from this man

Bridges, on which Mayor Hague predicated his opinion that Bridges is a Communist.

THE COURT: You are purporting to quote Bridges.

MR. MATTHEWS: Yes, your Honor. Not purporting actually quoting Bridges.

MR. FRAZER: But this is purely hearsay, absolutely hearsay, if he is going to try to prove things which Mr. Bridges said.

MR. MATTHEWS: No, no.

MR. FRAZER: Then he has to have Mr. Bridges here or some proper proof of it, not a publication.

THE COURT: Let me look at it again exactly to see how it is quoting him.

MR. MATTHEWS: Then I will give you a photographic copy of this.

THE COURT: Is this the quotation?

MR. MATTHEWS: Yes, your Honor, that is the source; I have given you the source, the photostatic copy of the quotation.

THE COURT: Is it a quotation by Mr. Bridges advocating the overthrow of the Government by violence?

MR. MATTHEWS: Just a minute, Judge Clark.

THE COURT: Does it? Just a minute. I am not asking that invidiously.

MR. MATTHEWS: May the record show the Judge's question to me because this is very important for the defense in this case. The purpose of this question is to cross-examine Mayor Hague upon statements which I have read from the record.

THE COURT: Well, I understood the Mayor's position to be that certain of these persons advocated the overthrow of the Government by violence, do I?

MR. MATTHEWS: Bridges is one of them.

THE COURT: Then it seems to me that question is pertinent if that is the case.

MR. MATTHEWS: I may have misunderstood you; if I did I am sorry.

THE COURT: I asked if he was in this question advocating the overthrow of the Government by violence, that is what I asked. Does he?

MR. MATTHEWS: Yes.

MR. FRAZER: I understand the Mayor is being cross-examined on his state of mind. That is the only thing which this question relates to.

MR. MATTHEWS: He is being cross-examined upon his statement in direct. Now, might we not have it right in the beginning, your Honor; to attempt to close the door to the Mayor of Jersey City in this case in this fashion would not only be inequitable but unjust. I have quoted his testimony. I have asked him a question, "In answering that question did you have before you this?" And there is the statement of Bridges which shows that the Mayor had a right to fear a man sending five hundred men into Jersey City, who would be guilty of such——

THE COURT: I will allow the question.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: May I get those things now, your Honor, please?

THE COURT: Yes.

Q. I show you a pamphlet and particularly a quotation from Harry Bridges. May I read it to you?

MR. FRAZER: No, no. Now, a quotation from Harry Bridges, that is an assumption of a fact which is not proven. A printed statement which is alleged to have been uttered by Harry Bridges is another thing.

Q. I show you also the Seattle *Post-Intelligencer*, of May 15, 1937, and ask you to look at that and say is that the same statement that I show you in this pamphlet.

MR. FRAZER: Just a moment, I have made an objection to one of the statements of counsel I didn't see that it was ruled upon or changed by counsel. I object to counsel's statement that he shows a quotation from Bridges.

THE COURT: It certainly would have to be "a newspaper article purporting to quote Mr. Bridges."

Q. All right, then, forget for the moment the pamphlet I showed you, and I ask you to look at that in the dimming light here, if you can see it, and say if you have seen that before.

A. Yes, sir.

Q. I hold in my hand the Seattle *Post Intelligencer*, photostatic copy of it, of May 15, 1937. I am sorry, I will have to have better light to read, if I may. "The end of the employing classes——"

MR. FRAZER: Now, just one moment. What are you reading from?

MR. MATTHEWS: The Seattle *Post Intelligencer*, May 15, 1937.

MR. FRAZER: I object to the admission or the use of this instrument. There is nothing in it which indicates that it is from any such paper at all except some kind of a written note on it.

MR. MATTHEWS: I represent to the Court that that is a photostatic copy of an article from the Seattle *Post Intelligencer*.

MR. FRAZER: I object to the use of it.

THE COURT: Of course, Mr. Matthews, if that objection is to be made you will have to have more proof.

MR. MATTHEWS: Why, just a minute, Judge Clark. Do I understand now that you are going to close the door——

THE COURT: Please, Mr. Matthews.

MR. MATTHEWS: Pardon, your Honor?

THE COURT: Please.

MR. MATTHEWS: Oh, excuse me.

THE COURT: You don't have to raise you voice so much. I said that it is a fact, of course, that we will have to know that that is an actual photostatic copy, if Dean Frazer questions it. That is, of course, a fact under the law of evidence.

MR. FRAZER: I might call the attention of the Court to the fact that there had been an alleged paper of Senator Smathers offered under similar conditions and it was objected to.

MR. MATTHEWS: I object, it was nothing of the kind; it was a typewritten statement, and your Honor said he might be produced.

Now, all during this trial there have been produced before your Honor in the petitioner's case newspaper accounts. The question pending before your Honor, so you may not lose sight of it, is that the Mayor has testified that Bridges threatened to come into Jersey City with 500 of his strong arm men and he said Bridges was a noted Communist. At page 1682 of the testimony, he named Bridges as an undesirable.

"Will you tell me upon what you based your information as to Bridges?"

THE COURT: I understand that; that isn't the question before the Court. The question is whether a sheet of paper with print on it in white is a photostatic copy of the article. Now, I don't know whether it is.

MR. MATTHEWS: I represent to this Court——

THE COURT: Dean Frazer says that he insists upon proof.

MR. MATTHEWS: I am not asking you to take anything he says. He is interrupting——

THE COURT: Wait a minute, Mr. Matthews.

MR. MATTHEWS: I wouldn't offer you anything except——

THE COURT: Wait a minute, Mr. Matthews.

MR. MATTHEWS: Except what I have already——

THE COURT: Mr. Matthews, if Dean Frazer doesn't want to take your word for the fact that it is a photostatic copy, nothing in the world can compel him to.

MR. FRAZER: If this photostatic copy was shown to the Mayor, it is another matter—if it was a photostatic copy; but I object to any statement as to what the copy is from. There is a handwriting obviously not Mr. Matthews' with which I am very familiar. He knows no more about that——

MR. MATTHEWS: I represent to you, Spaulding——

MR. FRAZER: You can't represent something you don't know, Mr. Matthews.

MR. MATTHEWS: Just a minute. I know this to be true.

Q. Mr. Mayor, I will ask you a question: Do you know who made that photostatic copy?

A. It was made in Jersey City.

Q. Yes. And of what paper, do you know?

MR. FRAZER: Oh, I object. Oh, what was it a photostatic copy of?

MR. MATTHEWS: Yes, of what paper was it a photostatic copy?

A. The Seattle *Post*—I can't read this here.

Q. Well, do you know that that is true, that it was taken from the Seattle *Post Intelligencer*?

A. Yes, yes.

MR. FRAZER: Well, now, just ask how does he know that?

A. (Continuing.) I was trying to distinguish this writing.

MR. FRAZER: You get your information from the writing, don't you, Mayor?

THE WITNESS: No, no. I got my information from a thorough investigation of all these papers that I went over and that I had studied, in my efforts to try to prove to this Court just who these characters were. I have no other way of showing who they are. I assure you that is a photostatic copy of the paper that was presented to me.

THE COURT: Mayor, how did the Seattle *Post Intelligencer* get to Jersey City?

THE WITNESS: Because we took it upon ourselves, your Honor, to write to Frisco, to write to wherever all these disturbances took place, and ask the police authorities and the governing bodies to forward to us whatever information they had concerning the groups of men who created all this disorder.

THE COURT: What date is that? I mean when you say you wrote, what date was that? What date did you write?

THE WITNESS: I don't know just offhand, Judge. We communicated with everybody. We can show you communications from any city where any disorder has taken place, where the CIO was involved, and where the Civil Liberties has entered into these pictures. They are suing me, they are the groups that questioning my sincerity.

MR. FRAZER: I assume that these came in the form of clippings from the different papers?

THE WITNESS: I have no other way of producing any facts, if I am not permitted to produce them in this manner.

THE COURT: Well, what is the date of that?

MR. MATTHEWS: May 15, 1937, your Honor, prior to the Bridges threat in Jersey City.

THE COURT: The article?

MR. MATTHEWS: Pardon me?

THE COURT: The article?

MR. MATTHEWS: Yes, your Honor.

THE COURT: Well, do you still object?

MR. FRAZER: Yes. I have no way of knowing that this is from the Seattle paper. If the Mayor wishes to be shown this photostat and asked whether he had seen this photostat, and that was the basis of his ideas, I have no objection to that; but to have it stated to have been published in the Seattle—whatever the name of it is—without any proof to that effect, I object to that. I object to the reference to it as proof of any of the statements made in it, as to their verity. Whether the Mayor saw that particular thing as a basis of his opinion, that is another matter; I don't object to its being shown to him for that purpose, but for that purpose only.

Mr. Matthews has said he bases his opinion upon the press, upon books, upon pamphlets. I offered the pamphlet. Your Honor——

THE COURT: The pamphlet is just a repetition of the article, isn't it?

MR. FRAZER: Certainly, your Honor. That shows the verity of the quotation; and, moreover, the New York *Times* of the next day carried the same article.

THE COURT: The same quotation, you mean?

MR. MATTHEWS: Same quotation, your Honor; pardon me.

MR. FRAZER: And is that supposed to be proof of what Mr. Bridges said? If it is offered for that purpose, it is obviously irrelevant and improper.

MR. MATTHEWS: I am asking the question.

Q. Did you have these facts about Mr. Bridges in mind when you called him a leading Communist?

MR. MATTHEWS: How else can anyone meet the proof?

MR. FRAZER: I object to the——

THE COURT: Don't say facts. Amend it to say "Did you have the alleged statement of Mr. Bridges?"

Q. Did you have these alleged statements—I am perfectly willing to amend it to that form——

THE COURT: All right. Will you answer that, Mayor?

MR. FRAZER: Might he also say at what time these alleged statements were in the Mayor's hands?

Q. Prior to your making the statement that Bridges ordered 500 of his strong arm men into Jersey City.

MR. FRAZER: Now, I object to that as a complete misquotation of any testimony that we have.

MR. MATTHEWS: Now, just a minute. Page 1223, 1224. I brought it up here before. Here it is.

Page 1223, the bottom, I will read a few questions about it so that the context will be available.

"MR. FRAZER: "—to define 'invasion' which he is now using again? That's what I am trying to ascertain, what he considers an invasion. Now he has just used the word which I am asking him to define.

"A. I am going to explain my interpretation of invasion, but you are interrupting me.

"Q. I am sorry. I don't wish to interrupt you, but I would like to have you confine yourself to the questions.

"A. My interpretation of invasion is the declaration that Harry Bridges has made, the noted Communist of the country, when he ordered 500 of his strong-arm men to invade Jersey City, to destroy the civic industry of Jersey City. That's an invasion."

The next page I quoted was pages 1682 and 1683. Mr. Ernst is examining. I will read you a few question in advance of it.

"Q. Will you name me please ten or let's say twelve CIO leaders who you have said were undesirables, not the rank and file, the leaders; can you name me ten or twelve?

"A. Well, John Brophy and all his assistants.

"Q. Name me another one besides John Brophy.

"A. Well, I don't know the names, I have read about Mr. Lewis' utterance condemning John Brophy and his assistants, who is now taking a very prominent part in the leadership of the CIO.

"Q. Now, Mayor, you know that isn't what I asked you; I asked you to name me some names.

"A. I am naming you John Brophy and all his assistants, that's all I know.

"Q. Can you name me another name?

"MR. MATTHEWS: Well, he has already named Bridges in this case.

"MR. ERNST: If your Honor will please ask counsel not to prompt the witness. This witness is a competent human being and does not have to have words put in his mouth by Mr. Matthews.

"Q. Do you know another one besides Mr. Bridges supplied by your counsel?

"A. Well, I forgot about Harry.

"Q. All right, now, name me another one.

"A. Curran."

And so on it went. These men were described as undesirable CIO leaders.

Now, it is the purpose of this question to ask the Mayor when you called them undesirable, and this is cross-examination on his own testimony, you based your opinion as to Bridges upon these articles and continually through the trial we have had articles, we even had a quotation from the Reich. I didn't ask them to bring anybody over to prove that the Reich said that.

THE COURT: I am allowing the question.

MR. MATTHEWS: So sorry, my hearing is not acute.

MR. FRAZER: I understand it is limited to the papers that are shown without designation of the sources; as a quotation from the Seattle paper, for instance, there is no proof.

MR. MATTHEWS: I read you: "The end of the employing classes was predicted yesterday by Harry Bridges, Pacific Coast president of the International Longshoremen's Association."

MR. FRAZER: I object to these things being read into the record. He may show the Mayor the instrument and ask the Mayor whether that instrument was part of the matter which came to his attention leading to his belief but he may not proceed to read whole news-

paper articles here, picking out what he wishes and calling the Mayor's attention to it.

MR. MATTHEWS: Your Honor, that isn't the purpose; it is only the same purpose that they had. They confronted this gentleman on the stand with quotations from everything that they had. I now want to show the Mayor the quotation and for convenience read it. If you want to let the Mayor read it I will let him read it.

THE COURT: You may read it.

Q. (Continuing.) "In a fiery talk before a group of students and faculty liberals on the University of Wisconsin campus." "Our policy is one of class struggle," Bridges declared. "Our policy is that we have nothing in common with employers. There will come a time when there aren't any employing classes any more and we subscribe and look forward to that day." "Bridges made but slight reference to Mayor John F. Door"—I won't read that if you don't want me to; it is not important to the issue.

MR. FRAZER: I haven't any desire for you to read it.

Q. (Continuing.) Continuing the quotation from Bridges. "We will use politicians so long as they can aid us," Bridges said. "We will support the C. I. O., the A. F. of L. will die. The men at the head of the A. F. of L. haven't got the brains to keep their set-up alive," Bridges asserted —it was all in quotes—"They are too tangled with the high operating interests. They are working for the Mellons, Morgans and the Vanderbilts. The C. I. O. does not advocate withdrawal from the A. F. of L. as yet but we will fight within it. The break will come. We are close to it now."

MR. FRAZER: Now, may I say "So what?"?

MR. MATTHEWS: When you re-direct him you can say "So what?" and he may answer you. For me I have my answer.

MR. FRAZER: You haven't asked him anything yet. Do I understand that that was a question?

Q. Yes. Will you please tell us—it is way back—whether you based your information in part on that knowledge of a speech alleged, as the Court suggested, to have been made by Bridges?

MR. FRAZER: I object to the part as to the knowledge of the speech, I object to that;—whether it was this item that gave him information which he relied upon, but not knowledge as to whether this speech was made.

Q. Will you tell me whether or not you based your information as to Bridges partially upon that article and the statements alleged to have been made by Bridges in it?

A. I have.

MR. FRAZER: Now we are getting it simplified and regular.

MR. MATTHEWS: Oh, I am just as regular as the day is long.

Q. Mr. Mayor, you said that you had in your possession, and you based your information of the interlock between Communism and CIO upon information which you gleaned from the pamphlet which I have in my hand issued by the "National Republic Magazine." That is correct, isn't it?

A. Yes, sir.

Q. And did you in that pamphlet at page 18 read a quotation from the labor speech of Mr. Green, head of the Federation of Labor, on the twenty-first day of May, 1937?

A. I did.

Q. I show you that pamphlet and ask you if you read that alleged quotation from the speech of Mr. Green on the day in question.

A. I did.

MR. FRAZER: May I look at that?

MR. MATTHEWS: Yes, quotation beginning "C.I.O."

MR. FRAZER: When was that published, what was this published for, when was that speech made?

MR. MATTHEWS: May 21; it is there, May 21, 1937.

MR. FRAZER: Do you know when this was published, John?

MR. MATTHEWS: Yes, Spaulding, that was published about——

MR. ERNST: No proof here at all.

MR. MATTHEWS: It was published,—I think I had a copy of it in December of last year.

Q. Now, Mr. Mayor, in what you read there is the statement of Mr. Green, the alleged speech of Mr. Green, that "The C. I. O. is being energetically supported by the American Communist Party!"?

A. Yes.

Q. Did he charge, in quotations, "An evil influence has caused groups of newly organized workers connected with the C. I. O. to follow destructive policies and as a result public opinion is turning against them"?

MR. FRAZER: I object to the question, whether Mr. Green was charging—you are reading from this—whether that appears in the pamphlet.

MR. MATTHEWS: That he read from an item taken from the Russian newspaper. I didn't read the rest of it. I thought you wanted me to confine myself to the quotation.

Q. Did you also see in that that the "New York Times" of June 28, 1937, had this quotation: "Men with Socialist and Communist backgrounds have been active in the automobile factories and power plants and other industries under the banner of the C. I. O."?

A. Yes, sir.

Q. And did you have those facts in mind when you answered your counsel or the counsel that examined you as a witness concerning the automobile strikes and rubber strikes in Akron and in Detroit, Michigan?

A. I did.

MR. FRAZER: I object again. Just a moment, Mayor, I object to the continuous incorporation by Mr. Matthews in his questions of the word "fact."

Q. Well, information instead of fact. O. K. Will you change that?

Did you have that information in mind?

A. Yes, sir.

Q. When you made the statements about the workers and so forth. And in your reading of this pamphlet did you read an article from the Communist Report of the Ninth Convention of the Communist Party?

MR. FRAZER: I object to the designation of it again. You are again calling these things by their names as though they were proven to be facts in this case.

MR. MATTHEWS: The alleged Communist Report.

MR. FRAZER: "Did you read a pamphlet which contained this page," is the way to have it, and mark the page for identification.

MR. MATTHEWS: Thanks, Dean.

Q. Did you read this pamphlet which contains page 15: "While we meet the C. I. O. is launching the second great crusade to carry trade unionism into the open shop citadel of monopoly capital. Nothing so heartening has been seen in the labor movement since 1919 when the Chairman of our Party, Comrade Foster, carried through the first great organizing campaign in the steel industry which culminated in the great general strike. We can say that the transformation would have been impossible without the energetic.

persistent, well planned and well directed participation of the Communist Party and its followers in the C. I. O. movement."

Did you read that?

A. Yes, sir.

MR. FRAZER: Will you tell me what that is being read from?

MR. MATTHEWS: Pamphlet issued by the National Republic Magazine, 511 11th Street N. W., Washington, D. C. It is being quoted from page 15 and it is an alleged quotation from the Report of the Ninth Convention of the Communist Party.

Q. Now, frequently during your testimony, well, several times during your testimony, Mr. Mayor, you referred to the Fish Report, did you not?

A. I did.

Q. I show you a book or a pamphlet, paper book, with the certification of the Clerk of the House of Representatives on the front of it. Will you look at the pamphlet besides the certification and may I ask you is that the Fish Report that you referred to?

A. It is, that is the certification.

MR. MATTHEWS: Do you want to look at the certification?

MR. FRAZER: No, indeed, I assume that that is correct.

MR. MATTHEWS: May I leave the certification on your Honor's desk so I won't lose it? I don't mean that for you, Spaul; I mean among my other papers. I don't mean it even for Mr. Ernst.

Q. Now, in making the statement as you did several times, during your testimony, that the CIO leaders were Communistic, did you read in the Fish Report of the investigation of Communistic activities statements by Comrade Foster, who is mentioned in the quotation I just read you?

A. I did.

Q. I show you page 9 of that report. First of all—strike that out—do you know that Comrade Foster is William Z. Foster?

A. I do.

Q. Yes.

A. And a prominent member of the Communists.

Q. Now, I show you that report and ask you if there is therein contained the testimony of William Foster, before the Fish Committee?

A. There is.

Q. Now, I ask you did you this:

"THE CHAIRMAN:"

To Mr. Foster; I interpolate to Mr. Foster.

MR. FRAZER: Might I ask the date of that report?

MR. MATTHEWS: Yes, your Honor, that report is 1931 or 2; I have forgotten——

MR. FRAZER: Might I ask what time that report came to the Mayor's attention?

Q. How long have you had a copy of the Fish Report, Mr. Mayor?

A. Oh, over a year; right after this trouble started, we immediately started to get together all these facts concerning the CIO and concerning everybody interested in the Civil Liberties that injected themselves into this controversy.

MR. FRAZER: When you say this trouble started, that refers to the November 29th episode?

THE WITNESS: Yes.

MR. FRAZER: Or immediately before that?

THE WITNESS: The first Bridges'——

MR. FRAZER: And it was after that that you got the report?

MR. MATTHEWS: No, he said he had the report a year, Mr. Frazer.

Q. Did you read this:

"THE CHAIRMAN:" to Mr. Foster—I interpolate to Mr. Foster.

"Now, can you tell us"——

MR. FRAZER: May I ask what the relevancy of this line of examination is? Mr. Foster has not been brought into this in any way. Mr. Foster is no party to the proceeding, and how can the statements of Mr. Foster, whether believed by the Mayor or not, have anything to do with this case?

MR. MATTHEWS: Because, if your Honor please, to answer my opponent, because in the statement of the Communist convention, the alleged statement, "Comrade Foster carried through the first great organizing campaign in the steel industry," and they add, "we can say that the transformation would have been impossible without the energetic, persistent, well-planned and well-directed participation of the Communist Party and its followers in the C. I. O. movement."

MR. FRAZER: Now, this is a report, the Fish Report of 1931. The CIO wasn't in existence——

THE COURT: As a matter of fact, Mr. Matthews, I think you will find that there was a Senate investigation of Comrade Foster, as you call him, at the time, because in my youth I attended the hearings with Mr. Lindabury.

MR. MATTHEWS: That must have been after 1931, if you say in your youth.

THE COURT: It was early.

MR. MATTHEWS: You have been on the bench thirteen years.

THE COURT: About eighteen years ago, I think, if I remember.

MR. FRAZER: Just around 1920, sir, when they were having——

THE COURT: I remember Comrade Foster, as you call him, being examined by a Senate committee.

MR. MATTHEWS: Yes, but this is only seven years ago, Judge Clark.

MR. FRAZER: Yes, but it is five years before the CIO, or more than that was organized.

THE COURT: I mean Comrade Foster didn't even attempt to conceal the fact from the committee, as I remember it, that he was a Communist.

MR. MATTHEWS: No, but by the same token, if your Honor pleases, I think that this man's utterances, if known to the Mayor, you understand, your Honor, from this report—from him I got the report—if known to the Mayor, the question is did that help him to conclude that these men, who were in the forefront of CIO, are Communistic.

THE COURT: Is there any proof——

MR. FRAZER: No proof of that whatsoever.

THE COURT: —so far that Mr. Foster had anything to do with the CIO?

MR. MATTHEWS: There is this proof, that Mr. Foster was the original organizer, and that the Communist Party——

THE COURT: Of what? Of the CIO?

MR. MATTHEWS: No, no, no; of the steel industry strike way back in 1919.

THE COURT: That is the one that those hearings that I attended were about.

MR. MATTHEWS: And that this CIO movement now is a continuation of that.

THE COURT: Well, there is a ga pof about fifteen years, there. What proof is there covering that?

MR. MATTHEWS: I want to show, since Foster has been glorified as the man who organized the steel industry, and that there is a tie-up between Communism and the steel industry, what Foster, who organized the steel men then, considered Communism and fidelity to American principles and to riot and bloodshed activities.

MR. FRAZER: It is clearly incompetent.

MR. MATTHEWS: More than that, I am prompted by my associate, shortly I shall show you that William Z. Foster is one of the directors of the American Fund for Public Service, the Garland Fund, which is the financing fund of the Civil Liberties Union and of various other activities that are entirely Communistic.

MR. FRAZER: Now, that is a wholly gratuitous statement on the part of Mr. Matthews.

THE COURT: I said, Mr. Matthews, before you came into the case, that I thought it would be very useful from the point of view of the public if we had a thorough investigation or search under oath into alleged Red activities. I have no objection to that. I am not sure how relevant that might be to the legal issues, but with the consent of both sides, I should think it would be a most useful thing. But that doesn't mean statements from counsel, statements from the newspapers, or hearsay testimony.

MR. MATTHEWS: This isn't——

THE COURT: I mean where is Mr. Foster? Why not produce him?

MR. MATTHEWS: I ask your Honor on the record to allow me to produce evidence out of the lips of Mr. Foster before the Fish Committee, that he considered that the Red flag and not the American flag was his flag, that he owed allegiance to the Soviet Government, and I want to show that that is the same man who is credited with having organized the steel workers in 1919, and that is the same man who today is a director of the Garland Fund, the American Fund for Public Service, which finances the Civil Liberties Union, the Workers Defense League and various others of these boring-in organizations that are Communistic.

THE COURT: Aren't you beginning at the wrong end? Shouldn't you show first that he has something to do with the CIO, and then, secondly, the so-called Garland Fund has anything to do with the Civil Liberties Union?

MR. MATTHEWS: Well, if you want me to do it that way on this case, I will do it, with Mr. Foster.

MR. FRAZER: Might I say also that this examination of Mayor Hague seems to be for the purpose of proving that Mayor Hague had a certain state of mind. I think it was perfectly obvious from his direct examination that he did. Now, if Mr. Matthews' purpose is to break down his statement that he had such a state of mind, then this would be proper examination. If he is conceding it, there is no reason for it whatsoever. The Mayor has stated his grounds, and I think everyone has been convinced that he stated them sincerely. Whether he had a lot of these things which went to the making up of that mind is something appropriate on direct examination but not under cross-examination unless it is for the purpose of checking on the Mayor's credibility. I think it is perfectly preposterous that Mr. Matthews should be attempting to do anything of that kind.

MR. MATTHEWS: It is not preposterous to test his credibility. Now, all that Spaulding has said means nothing. I am cross-examining him upon definite statements in the record. They have made their testimonial bed and they must lie in it while I cross-examine; because they have sought to create in this court and before this country, with favorable newspaper comment, that Mayor Hague had nothing in his mind at all to make him believe that Brophy and Bridges and the rest of them were Communists.

Now, I am bringing to the Mayor's attention what they would not. They said: "You will get your chance when you are examined by Matthews," as Mr. Ernst would say. Now when I get my chance, they say: "Oh, no; you mustn't do that; you mustn't give him testimony that these Communists have said, 'we owe no allegiance to any flag but the Red flag; we recognize nothing but the Soviet Government.'"

THE COURT: But isn't that a matter of common knowledge, Mr. Matthews, so far as that goes?

MR. MATTHEWS: But on this record it isn't a matter of common knowledge, please, Judge Clark. That's certain, isn't it, now?

So that I must have that in the event that it should be necessary for me ever to use it in the upper court.

MR. FRAZER: If it is a matter of which we have common knowledge, the Court may take judicial notice of it, and the upper court is equally capable of taking judicial notice of it.

MR. MATTHEWS: If Judge Clark will let me read it to him and say he will take judicial notice of it, I will be very glad to accept the Court's suggestion.

THE COURT: Go ahead.

Q. "THE CHAIRMAN: Does the Communist Party advocate the confiscation of all private property?

"MR. FOSTER: The Communists——"

MR. FRAZER: Now, I think we should have a ruling upon whether the use of this report, statements, alleged statements, as to what Mr. Foster, the alleged Communist, and very likely a real Communist, has said, is relevant—what the relevancy to this issue of that may be. There is nothing——

THE COURT: I suppose if Mr. Foster were called, he would say that he is a Communist and that he believed in Communism. Maybe he would even say he glorified in it.

MR. MATTHEWS: That isn't my concern in this question. I am cross-examining the Mayor upon what prompted him. He said the Fish report prompted him to the conclusion that these Communists were tied in with the CIO and vice versa. I quoted him from the pamphlet——

THE COURT: The Fish report doesn't say one word about the CIO, does it?

MR. MATTHEWS: No, there is no word about it; but, Judge Clark, even when we are looking for it, don't they ask us, "Well, what did you do yesterday?" or "What did you do a week ago?"

The same way with this man. If that is his stripe at that time, when he was organizing steel workers, and I show——

THE COURT: Well, you surely don't contend that the fact that a Communist organized steel workers in 1919 is proof that in 1937, because someone else organized steel workers, therefore the someone else is a Communist?

MR. MATTHEWS: Oh no; no, that would be a gross non sequitur. That is not what I am trying to prove at all. I am trying to show the character of this Fos-

ter who is mentioned, sir, in the quotation just given. Now, he is also a director of the Garland Fund. If you want me, as you suggested, to go back to the Garland Fund first and bring that in, so as to connect it up, as a present-day person, actually interested in these proceedings, I will be glad to do it.

MR. FRAZER: Well, may I say that this examination is not a cross-examination of the Mayor's testimony?

MR. MATTHEWS: Oh, yes, it is.

MR. FRAZER: The Mayor has testified as to certain things which were the basis of his——

THE COURT: I am not particularly inclined, Dean Frazer, to be technical about what is or what isn't cross-examination.

MR. FRAZER: I don't wish to be technical, sir, but I think we are taking a great deal of the time of the Court, and this type of cross-examination which Mr. Matthews is now indulging in is for the purpose of showing that there were sources which would have led the Mayor to conclusions other than those to which he arrived. Now, what Mr. Matthews on cross-examination is attempting to do, is to enlarge the scope of the Mayor's testimony on direct examination, which there has been no effort to question at all. It is like trying to prove over all the facts in the case after they have been admitted.

MR. MATTHEWS: That, of course, the proof—the purpose of cross-examination, your Honor, is to bring out from the standpoint of the attorney for the defense, what facts stated by the witness are helpful to the defense. Now, that's our privilege; that's a fundamental privilege.

THE COURT: Well, go back to the Garland Fund.

MR. MATTHEWS: All right, your Honor.

Q. Mr. Mayor, you declared that Mr. Ernst is Communistically inclined, didn't you?

A. I did.

Q. You also declared that the Civil Liberties Union is Communistically inclined, did you not?

A. I did.

Q. Now, in forming that opinion, did you have in your possession the Fish report, and had you read it?

A. I did.

Q. I turn to page 56 of the Fish report and show you the heading "American Civil Liberties Union."

A. I did.

Q. I turn to page 59 of the report and show you the heading "The Garland Fund." Right here, Mr. Mayor (indicating).

A. The Garland Fund; I did.

Q. Yes. Now did these facts in the Fish report from page 56 help you to form your opinion that Mr. Ernst is a Communist or Communistically inclined?

MR. FRAZER: Now that I object to; I object to the word "facts" again.

THE COURT: Is that the Fish report you have there?

MR. MATTHEWS: Yes.

THE COURT: May I see it, please?

MR. FRAZER: Not "facts," Mr. Matthews, please.

(Mr. Matthews handed a copy of the pamphlet referred to to the Court.)

THE COURT (after examining pamphlet): All right.

Q. "The American Civil Liberties Union is closely affiliated with the Communist movement in the United States."

MR. FRAZER: Wait a minute. I object. He has answered the question. Now are we to have all this read

into the record? He has said that that was the basis from which he got his information. Now, if Mr. Matthews wants to show that the conclusions which he drew from this were irrational, then he has a right to examine him on this matter. Otherwise he is concluded by the answer.

MR. MATTHEWS: No, your Honor,——

MR. FRAZER: Now, might I ask Mr. Matthews at this point whether these quotations from various publications that he has in his hand are to constitute the proof of Communism that has been running by suggestion throughout this case?

MR. MATTHEWS: I am cross-examining the witness, your Honor.

THE COURT: Why don't you put the report in evidence?

MR. MATTHEWS: Upon his statement—well, now, if your Honor pleases, there are isolated quotations against Mr. Hague in this case, and they said, "Did you base your information upon that"? Now, haven't I in cross-examination the right to introduce the quotations, which they wouldn't let him volunteer? How else would a man meet the situation?

THE COURT: Why not mark them then?

MR. MATTHEWS: What is that, your Honor?

THE COURT: Why not mark them and save time?

MR. MATTHEWS: Well, I want to put them on the record, if your Honor please.

THE COURT: All right.

MR. FRAZER: If he be permitted to do that, sir, I would ask an exception to your Honor's ruling.

THE COURT: All right.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. "The American Civil Liberties Union is closely affiliated with the Communist movement in the United States and fully 90——"

THE COURT: Who is the author of that report? Is that a quotation from the author of the report?

MR. MATTHEWS: Yes, your Honor, the Fish report.

THE COURT: Well, who is it? You had better have that in the record.

MR. MATTHEWS: The Fish report is signed, if your Honor pleases, Hamilton Fish, Jr., Chairman, Carl G. Bollman, Edward E. Lick, Robert C. Hall.

THE COURT: Were there witnesses called before the committee?

MR. MATTHEWS: Yes, your Honor, the list of the witnesses is here, all the witnesses.

THE COURT: Wouldn't it be the proper way to prove it to get the testimony and show what witness, for instance, made these assertions about the Garland Fund.

MR. MATTHEWS: But Mayor Hague is being asked what he read in this report to give him the conclusions.

MR. FRAZER: Well, are we to read into the record all the books and all the newspapers which Mayor Hague may have read at some time bearing upon this issue?

MR. MATTHEWS: Well, your Honor, the answer to that is no.

MR. FRAZER: Nobody has questioned the Mayor's sincerity.

MR. MATTHEWS: Except that we do want to read some other papers except the ones that they have read, the *New York Times*, etc.

THE COURT: I will allow it.

MR. MATTHEWS: Thank you, sir. Excuse me.

Q. (Continuing.) "And fully 90 percent of its efforts are in behalf of Communists who have come into conflict with the law. It claims to stand for free speech, free press and free assembly, but it is quite apparent that the main function of the A. C. L. U. is to attempt to protect the Communists in their advocacy of force and violence to overthrow the Government, replacing the American flag by a Red flag and erecting a Soviet government in place of the Republican form of government guaranteed to each state by the Federal Constitution."

"Roger N Baldwin, its guiding spirit, makes no attempt to hide his friendship for the Communists and their principles. He was formerly a member of the I. W. W. and served a term in prison as a draft dodger during the war. This is the same Roger N. Baldwin who has recently issued a statement that at the next session of Congress 'our job is to organize the opposition to the recommendations of the Congressional Committee investigating Communism.' In his testimony before the Committee he admitted having said at a dinner held in Chicago that 'the Fish Committee recommendations will be buried in the Senate.' "

Testifying on force and violence, murder, etc. the following is quoted——

THE COURT: What did happen to it?

MR. FRAZER: He was a prophet as well as a Communist.

MR. MATTHEWS: Yes, and those prophets, I hope, are not part of our administration, Judge Clark, because that is a reference to one not of our party.

Q. (Continuing.) "THE CHAIRMAN: Does your organization uphold the right of a citizen or alien, it doesn't make any difference which, to advocate murder?"

"MR. BALDWIN: Yes."

"THE CHAIRMAN: Or assassination?"

"MR. BALDWIN: Yes."

MR. FRAZER: If I may interrupt here, all of that part appears in resolutions now in evidence here which were given to us by the Jersey City authorities, and is there any possible reason for reading this all over again into the record? It is not proving anything, it is merely information which the Mayor accepted as having weight in forming his opinion.

THE COURT: Is it the suggestion that Mr. Baldwin advocated murder?

MR. MATTHEWS: That is the testimony, it is followed up.

MR. FRAZER: Well, there is in evidence a resolution adopted by the veterans, a copy of which——

MR. MATTHEWS: May I please cross-examine?

MR. FRAZER: —was sent to us by the Jersey City authorities attached to Mr. Casey's letter to us. That is in evidence. Now, if there is any need to repeat that I cannot see it.

THE COURT: I should think—I must say, Mr. Matthews, it seems to me that without the whole testimony, in other words, with just one excerpt from it——

MR. MATTHEWS: You wouldn't think the Fish Committee would do that, Judge Clark, just take an isolated instance and offer it to the country without its context?

THE COURT: I would be reluctant to believe that anyone advocated murder.

MR. MATTHEWS: That is his statement. Let me follow on.

MR. FRAZER: May I just say this before you do, Sir John? I cannot see, except Mr. Matthews is charmed with his own voice—because the part which he is now reading is actually attached to our bill of complaint——

A. For the benefit of the Court, Congressman Fish told that to the Chamber of Commerce, your Honor, and he informed me that that is the testimony of Mr. Baldwin before him.

THE COURT: I am not informed, of course, Mayor Hague.

MR. FRAZER: I think it is wholly immaterial whether it is his testimony or not.

THE COURT: The honorable congressman is a graduate of the same school that I am, as a matter of fact, and I know would not in any way falsify the testimony, of course not. I am only wondering if the full testimony would actually reveal that Mr. Baldwin advocated murder, because if he did advocate murder it seems to me he should have been punished for such advocacy.

MR. MATTHEWS: There are many of them who have gone unwhipped of justice which we will show you before we get through, but that is because of their influence with certain groups, not our party, I hope.

Q. (Continuing.) "THE CHAIRMAN: Does your organization uphold the right of the American citizen to advocate force and violence for the overthrow of the Government?

"MR. BALDWIN: Certainly, in so far as mere advocacy is concerned.

"THE CHAIRMAN: Does it uphold the right of an alien in this country to urge and advocate the overthrow of the Government by force and violence?

"MR. BALDWIN: Precisely on the same basis as any citizen.

"THE CHAIRMAN: You do uphold the right of an alien to advocate the overthrow of the Government by force and violence?

"MR. BALDWIN: Sure, certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited."

That is the language of the quotation.

"The American Civil Liberties Union has received large sums from the Garland Fund, of which Roger Baldwin is one of the directors. During the trial of the Communists at Gastonia, not for freedom of speech, of the press, or assembly, but for conspiracy to kill the chief of police, of which seven defendants were convicted, the A. C. L. U. provided bail for five of the defendants amounting to $28,500, which it secured from the Garland Fund, and all defendants convicted jumped their bail and are reported to be in Russia. The $28,500 bail was forfeited including $9,000 more advanced by the International Labor Defense. A committee of the New York Legislature, back in 1928 reached the following conclusion in regard to the American Civil Liberties Union: 'The American Civil Liberties Union in the last analysis is a supporter of all-subversive movements. Its propaganda is detrimental to the interests of the state. It attempts not only to protect crime but to encourage attacks upon our institutions in every form.'" "Your committee," adds the Chairman, "concurs with the above findings."

Now, the reference to the Garland Fund contains the name of Mr. Ernst as its treasurer, does it not?

A. It does.

Q. From that report on page 59.

A. The incorporation papers of Delaware carries Mr. Ernst as treasurer.

Q. Yes, his office incorporated the organization, did it not?

A. Yes, sir.

Q. "The American Fund for Public Service, Inc. located at 2 West 15th Street, New York City, generally known as the Garland Fund, has helped to keep alive the American Civil Liberties Union."

MR. FRAZER: May I object here, that the Garland Fund is not a party whatsoever; we have no objection to Mr. Matthews continuing to read outmoded matter, a congressional investigation whose report was considered at the time so rabble-rousing to the other rabble that is was snowed under.

MR. MATTHEWS: I object.

MR. FRAZER: And not adopted. Now, if it gives him any joy to continue to read, that's all right.

MR. MATTHEWS: It gives me very much pain to find Mr. Ernst as treasurer of this fund, which has financed these subversive movements.

MR. FRAZER: Mr. Ernst is not a defendant in this case.

MR. MATTHEWS: The Civil Liberties Union is and he has been called Communistic by Mayor Hague, and he was asked for his proof. Indeed, said Mr. Ernst yesterday, "Did you know that Governor Lehman appointed me on this?" "Did you know somebody else appointed me to that?" Now, what I want to know from the Mayor is, Did you know he was treasurer of this Garland Fund, whose contributions to these subversive interests are such that it shocks one in the same way that the New Masses. If your Honor will look at the pages of the New Masses and then look at what he said yesterday about fomenting religious differences, you will have a different opinion, and it is our concern that Mayor Hague shall appear before you and in the record here as having reason for his opposition to Mr. Ernst as a speaker in Jersey City.

MR. FRAZER: Mr. Ernst is not a speaker, has not asked for a permit.

MR. MATTHEWS: Oh, yes, he did.

MR. FRAZER: I beg your pardon, that's right. But the Garland Fund has absolutely no relevancy in this issue and the efforts which Mr. Matthews is now making to bring the Garland Fund into the matter is an effort to prove, not the fact that statements of that kind were made, but he is offering it, as I take it, as a substitute for substantive evidence. That is the only purpose that I can conceive that he has.

THE COURT: Of course, as far as an affirmative defense is concerned, it is not good proof at all.

MR. MATTHEWS: I am not offering it as that, I am just cross-examining the mayor so that he may have on the record and so that your Honor may have on the record his reasons for telling Mr. Ernst that he is this and that. I have, moreover, from the library in Jersey City here, the report of the Garland Fund, if your Honor would like to be looking at it, and I am going to introduce—not introduce it, but I am going to call it to the mayor's attention soon. But what I want to show you is that Roger Baldwin is one of the directors of this, that Norman Thomas is one of the directors of this, that Mr. Ernst is the treasurer of this, that Mr. Ernst incorporated this, and that what this has done has been subversive of Americanism, and has given rise to a great deal of the information——

THE COURT: The Garland Fund——

MR. MATTHEWS: Certainly to the information of Mr. Hague about Mr. Ernst.

A. Well, the Garland Fund, Counselor, is the foundation of this whole movement and if you are going to keep the Garland Fund out, your Honor, we might as well stop.

The Garland Fund will prove that this is the instigator to everything pertaining to Communism, that they supplied millions of dollars in expenditures maintaining the Communistic movement throughout the country——

MR. FRAZER: I object to speeches by everybody.

THE COURT: It hasn't been offered yet. Go ahead.

MR. FRAZER: Well, now, is there any reason why this should all be read into the record?

MR. MATTHEWS: It is very short.

MR. FRAZER: The mayor may be shown this and asked if that was part of the matter which came to him to make up his judgment, but if we are going to read all of these volumes and volumes and volumes in to prove a substantive fact——

A. Will you permit me to go on and show the country just exactly what is before this Court?

THE COURT: Go ahead.

Q. (Continuing.) The American Fund for Public Service, New York City, generally known as the Garland Fund, has helped to keep alive the American Civil Liberties Union, the International Labor Defense, the Communistic Legal Defense Committee headed by J. Lewis Engdahl, the Workers Communist School in New York City, and the Pioneer camps, as well as the Daily Worker and many other Communist and advanced Socialist and radical and ultra-radical organizations. This fund in original amount of about $900,000 was established in 1922 by a rich son of a Massachusetts industrialist, and increased in amount due to enhanced values of the stock of the First National Bank of the City of New York.

THE COURT: He also went to the same school, Congressman Fish and I went to, so it seems to have produced all shades of opinion.

MR. MATTHEWS: Yes, your Honor. I am also from Massachusetts and I remember Harvard in the good old days.

THE COURT: No, the elementary school.

MR. MATTHEWS: Groton?

THE COURT: St. Marks.

MR. MATTHEWS: Swell school.

Q. (Continuing.) Well, continuing: And that was increased to $2,000,000, the $900,000. "Of this sum, approximately $600,000 is left. The directors of the Garland Fund are: Roger Baldwin, Robert W. Dunn, Morris L. Ernst, Elizabeth Gurley Flynn, Lewis S. Gannett, Benjamin Gitlow, Clinton Golden, James Weldon Johnson, Freda Kirchway, Clarina Nichelson, Scott Nearing and Norman H. Thomas. The following is a partial report of the loans and expenditures from the Garland Fund to Communist organizations."

Now, in order that you may have that in source I have it right there before you, but I have made a compilation, if your Honor please. However, since I am not offering it as testimony but as cross-examination of the mayor I will read from the report:

"The Daily Worker, the official Communist organ of the United States, $17,600," but your Honor will find before you there that the grand total in the Daily Worker in the Garland report that you have is $14,213.66 as of that date.

"The Passaic strike funds $25,318; Passaic bail bonds deposited for Communist strikers $45,000; Workers School at New York $11,000; International Labor Defense $14,000; Sacco-Vanzetti Committee $17,000; All-American Anti-Imperialist League $1000; Novy Mir, a Russian Communist weekly newspaper $500.

"The following loans were made to Communist organizations:

"The Daily Worker $31,375; International Labor Defense $35,000; Sacco-Vanzetti Committee $5000; All-American Anti-Imperialist League $100,000; Novy Mir $3000; Trade Union Educational League, now liquidated, $1500.

THE COURT: Are you picking out items—I notice this book you kindly gave me, Mr. Matthews, has a lot of other items.

MR. MATTHEWS: I am reading from the Fish report. I would be glad to give that to you; I am not picking out anything.

THE COURT: There seemed to be a lot of other items, Mooney and Billings.

MR. MATTHEWS: Yes, I think that is there.

THE COURT: Contribution for work against labor injunctions.

MR. FRAZER: You realize, your Honor please, the only purpose of this recital is not to elicit any fact, it is merely to read what Mr. Matthews considers a very damning kind of propaganda at a critical——

MR. MATTHEWS: I have considered nothing of the kind, I am trying to justify——

THE COURT: All I mean is that it seems to me that this report that you gave me should also be in evidence.

MR. MATTHEWS: Well, I cannot offer anything in evidence. I will be glad to have you mark it for identification.

THE COURT: I didn't mean in evidence. Mark it for identification.

MR. MATTHEWS: It is a library book but I think your Honor can protect us on that.

(Marked D-10 for identification.)

MR. FRAZER: Why not put in Das Kapital too?

MR. MATTHEWS: Das Kapital I will leave where it was spawned.

Q. I show you a paper, Mayor Hague, called the New Masses, dated May, 1932, and I ask you do you see the Garland Fund listed as the ownership of that New Masses?

MR. FRAZER: At the present time?

MR. MATTHEWS: Yes.

MR. FRAZER: Well, now, I don't know what the ownership of this is. In 1932 it may be.

MR. MATTHEWS: And it is today.

MR. FRAZER: How do you show that?

MR. MATTHEWS: If you want to show that that isn't correct you may do so on re-direct examination.

MR. FRAZER: Not at all, this is not cross-examination. There is nothing about Garland Fund ownership of New Masses in direct examination. If you are going from here to the New Masses, I don't know where you will go from the New Masses. If you can tie that with some common directors to something else, that will be brought in. There seems to be no limit.

THE COURT: I don't think there is any objection to this, Mr. Matthews, as a means of showing a state of mind, but as a matter of affirmative proof——

MR. MATTHEWS: I don't offer it as such.

THE COURT: —there would have to be some proof as to how the Garland Fund operates or whether Mr. Ernst has any control as treasurer of where the fund goes.

MR. FRAZER: He is not attempting to prove a state of mind, your Honor please; the mayor's state of mind is well known.

MR. MATTHEWS: If that were so I wouldn't be cross-examining him. You tried to make it known out of isolated quotations from newspapers. Now I will give you the real facts.

THE COURT: You shouldn't, Mr. Matthews, keep saying "facts."

MR. MATTHEWS: Well, that is for your Honor to determine, the real evidence.

MR. FRAZER: No, it is not for his Honor to determine; his Honor determines on proper evidence before his Honor, and these things may not be offered as evidence, they are a rehash of old things over the dam. We now have the New Masses of 1932. We have gone back to reports of Foster dated back to 1920.

MR. MATTHEWS: This is the New Masses, a magazine financed by the Garland Fund, of which Mr. Ernst is treasurer.

THE COURT: Well, everybody knows, almost since I was a boy, that has been published.

MR. MATTHEWS: Well, I cannot help whether it has been published since either you or I was a boy. What I want to show in this question now is that this magazine, of the type which is in front of you now, is financed by the Ernst mob.

MR. FRAZER: Now, if he wishes to show that he has a right to do it if it is relevant, but he has not a right to attempt to do it by asking the mayor whether he read something about it somewhere. Now, that is the purpose, as I indicated before. He denied a moment ago that that is the purpose.

MR. MATTHEWS: Oh, no.

MR. FRAZER: Theoretically he is examining the man now upon the state of mind of the mayor.

MR. MATTHEWS: With respect to Mr. Ernst.

MR. FRAZER: A state of mind which Mr. Matthews is trying to establish. The mayor fully established it on his direct examination.

MR. MATTHEWS: You have said that so often.

MR. FRAZER: No, I wish to reiterate it. He has fully established it upon his direct examination. Now, Mr. Matthews is not in any sense on the theory of cross-examination trying to limit the extent of that mental state nor to contradict the mental state, that's established. He is only trying to show that the mental state exists in full vigor. That is not the function of cross-examination and I object to further testimony along this line.

MR. MATTHEWS: I just want to show, because Mr. Frazer shut off Mayor Hague from giving his reasons that they didn't do him right, I want to show on cross-examination—they having made their testimonial bed must lie in it—I have a right to have the Mayor of the city as well as a man, a defendant in this case, called by them give the facts that he relied on, or alleged facts, as your Honor prefers to call them. Now, one of the facts is that the Garland Fund owns the New Masses. If your Honor just looks at the New Masses, I am quite confident you will conclude that when Mr. Ernst made that grandiose statement about minority religious groups you will be shocked into insensibility as a Christian gentleman by the very look of that picture.

MR. FRAZER: Now, there is nothing in evidence whatsoever, there is no fact—Mr. Matthews refers to a fact—in relation to the ownership of the New Masses.

THE COURT: I think we are willing to concede that the New Masses advocate doctrines which, as you say, would shock a Christian gentleman. I don't think there is any doubt about that.

MR. MATTHEWS: I want to show that the ownership is in the Garland Fund.

THE COURT: Shouldn't you, not for the purpose of showing a state of mind but for the purpose of showing whether it is a logical state of mind perhaps, show that the Garland Fund or deed of trust, whatever it is, gives Mr. Ernst discretion to give money to the New Masses?

MR. MATTHEWS: The Garland Fund owns it.

THE COURT: But had Mr. Ernst anything to do with buying this?

MR. MATTHEWS: Well, that was his opinion, that since they own this magazine, since he is one of the directors, since he is the treasurer of the fund, unless he is a sphinx, at meetings he must have O. K.'d what went on.

THE COURT: How long, does anyone know how long the fund has owned the New Masses?

MR. MATTHEWS: 1932 is the first knowledge we have that the Garland Fund purchased the New Masses, because it is the first statement of ownership that we have.

MR. FRAZER: There is nothing in there indicating the purchase.

MR. MATTHEWS: Oh, yes.

MR. FRAZER: There are a series of owners.

MR. MATTHEWS: You see you have each year, as your Honor knows—may I point out to you: "The American Fund for Public Service" is another name for the Garland Fund.

MR. FRAZER: Quite a number of other people there, too.

MR. MATTHEWS: Yes, Norman Thomas is a director, Baldwin is a director.

MR. FRAZER: It doesn't say it is the owner.

THE COURT: In other words, the Garland Fund or deed of trust might not leave it to his discretion. Then all you could say is that Mr. Ernst should have resigned as treasurer when they bought in.

MR. MATTHEWS: I don't think Mr. Ernst should have resigned; I think he should remain as long as he bought it.

MR. FRAZER: If Mr. Matthews is sincere in that he is saying it is very simple to ask the Mayor whether he was informed that the Garland Fund was such and such a thing and so and so and for that reason came to such and such a conclusion. There is no necessity for him to be reading all of these large extracts and bringing in copies of the New Masses and trying to give the impression of ownership, which is not yet in evidence; he can ask the Mayor whether he believed that to be the fact and if the Mayor says yes, that is sufficient for the mental status.

MR. MATTHEWS: I submit, if your Honor please, the printed affidavit in the New Masses by William Wippe, notary public, and Francis Strauss——

Q. Now I show you affidavit headed: "Affidavit of ownership required by the Act of Congress August 4, 1912, of New Masses, published monthly, New York, N. Y., for October 4, 1930——

MR. FRAZER: You show a copy of the New Masses of a certain date, you don't show the affidavit at all.

Q. I show you an affidavit in the New Masses—Mr. Frazer wants to get the place—of May, 1932, particularly on page 28, and particularly after the Fish Report, and particularly on page 28, and I ask you in that affidavit of ownership do you read that "the owner is the American Fund for Public Service, 2 West 13th Street, New York

City," and then do you read, "James Weldon Johnson, president, Morris L. Ernst, treasurer"?

A. I do.

Q. And were those facts known to you, Mr. Mayor?

MR. FRAZER: Now, I object again, were those facts known to him. Was it the reading of that article?

MR. MATTHEWS: No, I object; don't frame my question.

MR. FRAZER: But again you are saying facts.

MR. MATTHEWS: You object?

MR. FRAZER: I do object.

MR. MATTHEWS: I haven't finished my question. I don't know how you can rule until I finish my question.

Q. Were those facts known to you from the reading of the New Masses in that particular place I show you, known to you at the time and being known to you did they help you form your opinion of Mr. Ernst as a Communist?

A. They did.

MR. FRAZER: Those facts. Of course, do you mean ultimate facts?

MR. MATTHEWS: There are no ultimate facts except in the Deity.

A VOICE: Oh!

MR. MATTHEWS: You see, just a little rise when I mention the Deity from the godless among us.

MR. FRAZER: Now, I object to those remarks, if the Court please.

MR. MATTHEWS: That was clearly it, your Honor, and as a Christian gentleman I resent it.

MR. FRAZER: I see no reason for bringing the Deity continuously into court.

MR. MATTHEWS: I think he is in court all the time.

MR. FRAZER: All right. He doesn't have to be brought in because he is here already then, Sir John.

MR. MATTHEWS: Will your Honor give me a ruling on the question?

THE COURT: Go ahead. You may answer.

Q. Did those facts that you read——

A. Yes.

Q. Help you form your opinion? Now, Mr. Mayor——

MR. MATTHEWS: I would be very glad, if your Honor wants me, to have that marked for identification. I would really like to have that marked for identification, because it is the evidence of ownership there by the Garland Fund.

(Marked Exhibit D-11 for identification.)

MR. MATTHEWS: If your Honor please, may I request permission to have this photostated so that I may return the original?

THE COURT: Yes.

MR. MATTHEWS: There is no objection to your using this, Spaulding, if you wish.

MR. FRAZER: What was that?

MR. MATTHEWS: I asked to have it photostated so that I could return the original. It does not belong to me.

Will your Honor grant a five minutes' recess, because of the fact that Mr. O'Mara and I want to confer about a matter?

THE COURT: I will grant a ten minutes' recess.

MR. MATTHEWS: Ten minutes, all right, instead of taking it later?

THE COURT: Yes.

(Short recess.)

AFTER RECESS.

Q. Mr. Mayor, at page 1487 of your testimony you said that the name CIO was a name that was considered a serious question in any city, and that the papers were carrying spreadheads all over the front pages, showing disorders and violence.

I show you a copy of the "Akron Beacon Journal," Akron, Ohio, Friday evening, May 27, 1938, and ask you is that one of the papers that you referred to?

MR. FRAZER: Now I object. A paper from Akron—what date did you read?

MR. MATTHEWS: May 27, 1938.

MR. FRAZER: 1938—cannot possibly have had any effect upon the Mayor.

THE COURT: What is the date?

MR. MATTHEWS: May 27, 1938.

THE COURT: No, I think that's too late, Mr. Matthews.

MR. MATTHEWS: Oh, but Judge Clark, may I argue a moment? You know, the Mayor was asked questions as to whether or not these people would be entitled to come into Jersey City at any time in the future, and the Mayor's testimony was that the name CIO in Jersey City is thus and so, and I just want him to explain to the Court what those reasons were, and their other reasons, according to the Mayor.

THE COURT: I don't see any particular relevancy of matters in the future, as far as that goes. You didn't object at the time.

MR. MATTHEWS: Your Honor allowed an amendment to the complaint so as to permit them to do it.

THE COURT: Not as to the future.

MR. MATTHEWS: What is that, your Honor?

THE COURT: I allowed an amendment to the complaint to include events after the filing of the complaint and up to the time of the trial.

MR. MATTHEWS: Yes.

THE COURT: But not as to the future.

MR. MATTHEWS: Well, I take it your Honor would like to know why the Mayor says that any Communist or CIO agitators of the brand that has been stated in this trial by him are not allowed in Jersey City.

THE COURT: Well, as to the future, I don't see how we are concerned with that. I think it is relevant as to the past.

MR. FRAZER: May I make a suggestion to the Court? If the examination which Mr. Matthews is conducting now has any relevancy whatsoever, it is merely for the purpose of showing what the Mayor's state of mind was which led him to take the action which is the basis of this complaint. Now that, I think, is the only basis.

MR. MATTHEWS: No, your Honor,——

MR. FRAZER: I respectfully submit that if Mr. Matthews wishes to go along the line of examination which he has been going along since these instruments from which he has been so volubly reading are not substantive proof of any of the facts contained in them, that he offer what documents he believes had effect upon the Mayor's mind in speaking about the state of mind which resulted in the actions complained of; and that having produced those, and inquired of the Mayor whether those instruments were the instruments which brought about the state of mind, not in any way in dispute herein, in fact we elicited it on direct examination,

that state, that those instruments then be marked in evidence. There is no reason for us to read over and over again newspaper articles which stated a condition at a certain period——

THE COURT: Well, I don't think that particular one is permissible because of its date. Didn't you give the date——

MR. MATTHEWS: If your Honor please, he said that they are objectionable in Jersey City now, the CIO.

THE COURT: What?

MR. MATTHEWS: The CIO organizers are objectionable, as speakers, in Jersey City now, and that they are hooked up with them.

THE COURT: All right. Isn't it for me to determine, I mean in the first instance, of course,——

MR. MATTHEWS: Yes.

THE COURT: —whether that position is justified?

MR. MATTHEWS: Sure; there is no doubt about it.

THE COURT: On the past facts, not on the future.

MR. FRAZER: I might also say that it is perfectly obvious——

MR. MATTHEWS: May I address the Court without interruption, please?

MR. FRAZER: I thought you had finished.

MR. MATTHEWS: You will allow that the Court above will have to know why the Mayor said those things.

THE COURT: I do, but I don't think that the Court above has to know something as to the future, which is what that date indicates, isn't it?

MR. MATTHEWS: Why, today, did he testify, or yesterday, that those men are persona non grata or undesirables in Jersey City, and he says that these papers, these streamline papers, make them so; and I wanted to show the picture of the police being shot down and the machine guns being fired in the Akron Rubber strike, which was part of the testimony.

THE COURT: Well, of course I don't know. Is it a fact that there were any machine guns?

MR. MATTHEWS: Yes, your Honor; sure.

MR. FRAZER: This is just——

MR. MATTHEWS: Let me show you.

MR. FRAZER: —what is vulgarly called a smear campaign.

MR. MATTHEWS: No, I left that to Morris long ago. There you are, your Honor (showing a paper to the Court).

MR. FRAZER: Whose are the machine guns? Whose are the machine guns?

MR. MATTHEWS: The police.

MR. FRAZER: Oh, all right.

MR. MATTHEWS: The police were forced in that strike, in order to defend life and property, to use that method.

THE COURT: Well, I suppose——

MR. FRAZER: That's Mr. Matthews' conclusion.

THE COURT: I suppose that, sadly enough, it is a fact that in labor warfare over a period of years, labor disputes, rather, the events take on the nature of a war. I am sorry, I think everyone is sorry, that that gets to be the case.

MR. MATTHEWS: We want to show, and we have shown, from the utterances already, that the Mayor naturally was afraid to allow that kind of stuff to come into Jersey City when the experience of Akron was that.

THE COURT: Well, I am not opposing that, I am just saying that it should be shown in the past, Mr. Matthews, not in the future.

MR. MATTHEWS: This isn't a question of showing it in the future. I want to show why the Mayor objects to these people coming in——

THE COURT: Suppose, for instance, a strike had occurred over the week end and would be so reported in the newspapers, would you feel that that was relevant?

MR. MATTHEWS: Certainly, your Honor. That would only be evidence to your Honor that when the Mayor says on this stand, as the newspapers themselves quoted him this morning, that these people can't come into Jersey City, this is the reason.

THE COURT: Then I suppose you might logically say a year from now I would have to deal with this. I mean I have to deal with the litigation in the past. That is the point.

MR. MATTHEWS: You have to deal with the cross-examination of a witness from the statements he has made under direct examination.

THE COURT: No, I will exclude that on the ground it refers to the future.

MR. MATTHEWS: Your Honor will allow me an exception?

THE COURT: I will allow you an exception, yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: The offer being to introduce the *Akron Times* of May 27, 1938, depicting——

MR. FRAZER: No, I object.

MR. MATTHEWS: —the riot at the Goodyear plant.

MR. FRAZER: No, no, not depicting anything. Again we are making a speech for the press.

MR. MATTHEWS: Oh, I want to make my offer on the record, so it may be seen above. Depicting the riot at the Goodyear plant.

MR. FRAZER: Mark the paper; mark the paper. The offer is of that paper, mark it for identification.

MR. MATTHEWS: Mark it in evidence.

MR. FRAZER: No, not in evidence; it is not evidence of anything.

MR. MATTHEWS: Oh.

MR. FRAZER: Mark it for identification.

MR. MATTHEWS: Then I ask to have marked the *Akron Times-Press* of Akron, Ohio, of May 27, 1938, the pictures of the riot at the Goodyear plant, not the entire paper.

THE CLERK: As one exhibit?

MR. MATTHEWS: Yes. It is only the first page, of course, because it is for the pictures and the streamlines.

MR. FRAZER: Why not say the first page, then, instead of trying to designate what is in it? The first page is what you are offering. You don't have to read what is in it now.

(Marked for identification D-12.)

MR. MATTHEWS: And the same for the *Akron Beacon Journal* showing the riot on that picture.

MR. FRAZER: I object, I object. The first page; and no further comment by counsel.

MR. HERSHENSTEIN: And page 14 shows photographs, too.

MR. MATTHEWS: And Charlie tells me on page 14 there are other photographs of the riot, which I also offer.

MR. FRAZER: One moment. I object. Let him make his offer merely of what pages he is offering, and no statement as to what is on them.

(Marked D-13 for identification.)

Q. Now at page 1564 you were asked:

"Mr. Mayor, do I understand from you that the American Civil Liberties Union is an undesirable organization, to use your words?

"A. Yes, sir.

"Q. And when you say it is an undesirable organization, do you mean only its directors, or do you mean its members?

"A. I mean the heads of it. You are one of them."

Mr. Ernst is examining you.

Then you were asked if they were so undesirable was none of the directors allowed to speak—was no one of its directors allowed to speak in Jersey City, and you answered not according to the testimony before the Fish Committee of Mr. Baldwin, and you added "not according to my judgment."

That was the testimony I read you from Mr. Baldwin shortly ago, is that correct?

A. Correct.

Q. Does the fact that you believe Mr. Ernst is treasurer of the ownership of the New Masses contribute to your opinion that Mr. Ernst is undesirable in Jersey City as a speaker?

A. It does.

Q. Now, you said at page 1561 of your testimony that you made an investigation of Mr. Ernst before and after he was refused a permit, by reading about him in various reports and so forth. Now, did this information about Mr. Ernst, Mr. Thomas and Mr. Baldwin, in the Fish report, help you to determine that they would be undesirable people to address outdoor meetings in Jersey City?

A. It did.

Q. At page 1580 of your testimony you said that you read in the papers the expose of David Dubinsky, one of the electors of the American Labor Party. Now, I ask you, did you read that expose in this pamphlet that I used before of the *American Republic Magazine* concerning Mr. Dubinsky, and is that the article from which you gained your information?

A. Yes; about his activities on the Red Spain?

Q. Yes. Is that the article?

A. Yes.

MR. FRAZER: Do you want to mark that for identification? I don't think it has been marked.

MR. MATTHEWS: The whole pamphlet? Yes.

MR. FRAZER: Yes.

MR. MATTHEWS: Sure, I will be glad to mark it.

(Marked Exhibit D-14 for identification.)

Q. You also testified that John L. Brophy was a Communist, and you said that John L. Lewis denounced him. Now did you get your information, and was your source of information also this pamphlet, or part of your source of information this pamphlet which I show you, and particularly at page 21?

A. Yes, sir.

Q. Now at page 1224 of your testimony you said that Mr. Carney in a public declaration said that he was going to invade Jersey City with three thousand men. You were

shown the *Newark Sunday Call.* I now show you the *Newark News* of November 23, 1937 and ask you did you see that article?

A. Yes, sir.

MR. FRAZER: Do you want to mark that?

MR. MATTHEWS: Yes, yes, gladly.

(Marked Exhibit D-15 for identification.)

Q. Now, Mr. Frazer read the headlines of the *Call* article, and he also read the script underneath and asked you several questions as to the correspondence between the story and the headline. Now this headline read:

"CIO prepared for invasion. Mass drive by three thousand to be launched Monday in Jersey City."

MR. FRAZER: Just a minute, just a minute.

MR. MATTHEWS: May I finish my question, please?

MR. FRAZER: All right. No, I would like to interpose my objection right now.

MR. MATTHEWS: All right.

MR. FRAZER: The paper has already been marked for identification. There is no reason for your going further and describing what is in it. He says that that paper was the basis of his state of mind, part of it. That is the only purpose for which it is offered, or for which it is marked. There is no sense in reading the paper at this time.

MR. MATTHEWS: Don't be afraid because a good paper told the truth about Carney's invasion.

I want to put on this record for this man's opinion being formed the truth from a truthful statement of the facts.

MR. FRAZER: We have conceded this man's opinion.

M . MATTHEWS: All right.

MR. FRAZER: We have elicited it ourselves on direct examination.

MR. MATTHEWS: But how——

MR. FRAZER: And what can be gained by putting in paper after paper, merely to establish something which has already been conceded, to all intents and purposes?

MR. MATTHEWS: Do you concede it?

MR. FRAZER: I am perfectly willing to admit for the record that Mayor Hague believed that these people were dangerous persons.

MR. MATTHEWS: Do you concede that the CIO prepared for an invasion——

MR. FRAZER: No.

MR. MATTHEWS: —and that the Civil Liberties Union, the International Labor Defense Worker, the Defense League——

MR. FRAZER: I object; I object.

MR. MATTHEWS: —all were going to send delegations, as this article says, into Jersey City?

MR. FRAZER: I concede nothing of that. That is exactly what I have been trying to call to your Honor's attention. Mr. Matthews is continuously confusing the question of whether these statements are facts or whether they were something which Mayor Hague read which made him believe a certain thing. They are not proof in any way of what happened.

MR. MATTHEWS: Must it be that the *Newark News* is not facts and the *New York Times* or the *New York Post* is?

MR. FRAZER: They are not proof.

MR. MATTHEWS: Well, if they are not proof, they are offered to show your Honor——

MR. FRAZER: They are marked already.

MR. MATTHEWS: —that Mayor Hague had in his possession at that time, not the innocuous articles that is in the *Newark Sunday Call,* in which the headline alone spoke of this invasion, but this article spoke not only of the invasion, but of the invaders, and it mentioned the 3000 CIO invaders, it mentioned the Civil Liberties Union, one of the defendants in this case, the International Labor Defense, the Hudson County Committee for Civil Rights, all of whom were going to send delegations into Jersey City.

THE COURT: I thought that had been discussed pretty fully. What further discussion do you want?

MR. MATTHEWS: The discussion is this, that I want the record, with your Honor's permission, in this case, to show not that Mayor Hague had an article in which there was a headline that didn't consone with the reportorial facts below it, but that he also had in his possession these reportorial facts corroborative of the headline.

THE COURT: I thought the paper was already in evidence.

MR. MATTHEWS: No, your Honor, no, your Honor. I can't offer it in evidence. It is cross-examination.

THE COURT: I thought we had it offered before.

MR. FRAZER: It was shown to Mayor Hague, and he admitted that it was the first article of the kind. That was the original article from which these are rewrites.

THE COURT: I suppose the question as to whether the headline and the article correspond is for me to determine.

MR. MATTHEWS: Yes, but how would you determine, your Honor, or how will anybody above deter-

mine, that the Mayor had any other article before him unless that is in your record?

MR. FRAZER: We have marked it for identification.

MR. MATTHEWS: Oh, but——

THE COURT: Do you consent to its going in evidence?

MR. FRAZER: This article?

THE COURT: Yes.

MR. FRAZER: Evidence of what?

THE COURT: Just as it reads, not as to the truth.

MR. FRAZER: Not evidence of the truth, but that such an article appeared.

THE COURT: Was read, too, I suppose?

MR. FRAZER: And I will concede that the Mayor read it, if that helps Mr. Matthews.

Q. Now, Mr. Matthews, it is conceded that this article appears—its truthfulness is not conceded; it is in the Newark *Evening News*, and it says:

"Final plans for their invasion of Jersey City were completed last night by New Jersey C. I. O. leaders. A mass organization drive by three thousand C. I. O. representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city. Aside from field organizers of International unions, more than 2800 volunteers will distribute leaflets in an area bounded by Bay and 17th Streets, Jersey City. Of that number more than 2000 will be from the International Maritime Union. Other organizations which will send groups——"

MR. FRAZER: I object, I object.

Q. (Continuing.) —"include the Civil Liberties Union, International Labor Defense, Workers Defense, and the Hudson County Committee for Civil Rights."

Now, did you have that in your possession and did that strongly incline your mind to the fact that Carney intended to invade Jersey City with these Bolshevik elements?

A. It did.

MR. MATTHEWS: That is November 23d of 1937.

MR. FRAZER: I don't suppose you want to mark it in evidence now, do you, after having read it all? Still it is in the record, why complicate it further?

MR. MATTHEWS: I would be very glad to have you use it for any purpose, if you can get any surcease out of it, or be happy.

MR. FRAZER: All right.

MR. MATTHEWS: Surcease of sorrow, I mean.

Q. Now, in that article, Mayor Hague, the International Labor Defense was mentioned as sending a delegation. Had you been familiar from your reading of the Fish——

MR. FRAZER: I object.

Q. (Continuing.) —report that the International Defense was a Communistic organization?

MR. FRAZER: I object to any testimony about the International Labor Defense. It has nothing to do with the issues here; it is no part of the issues here. It is in no way impleaded in this cause. The Lawyers Guild was excluded when we tried to offer evidence about that; that was excluded.

MR. MATTHEWS: But I am not offering this as proof of anything. I am cross-examining the Mayor as to what made him think that Carney was going to come in with a bunch of dangerous Reds.

THE COURT: Was there any statement in Mr. Carney's article about the International Labor Defense?

MR. MATTHEWS: Yes, your Honor; yes, your Honor.

MR. FRAZER: In which article? Mr. Carney's article?

MR. MATTHEWS: This is the Newark *News* (handing to Court). Your Honor will excuse the underlining.

THE COURT: All right.

MR. FRAZER: I have made my objection, sir.

THE COURT: Yes, you may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. "The International Labor Defense was formed in 1925 with headquarters in Chicago, as a Communist organization to defend class-war prisoners and for the repeal of all sedition and criminal syndicalist laws. It later moved to New York City. It provides legal aid to all Communists arrested for revolutionary activities and helps to secure bail for them. In addition, its program is as follows:

"(1) Defense of foreign-born workers and against deportation.

"(2) Gives publicity to persecution of workers.

"(3) Fights for the rights of workers to organize for self-defense.

"(4) Support to prisoners and families.

"The Active head of the International Labor Defense is John Louis Engdahl, who holds the position of secretary general. He is an American Citizen and a graduate of the University of Minnesota. He is one of the most aggressive and active Communists in the United States. He has been to Russia several times and has served on the central executive committee of the Communist Party of America in this country. Last November he ran on the Communist

ticket in New York for lieutenant governor. At one time he was editor of the Daily Worker. In addition to being secretary of the International Labor Defense, he is the editor of the Labor Defender, a monthly Communist magazine and the official organ of the International Labor Defense, with a circulation of over 20,000. It is revolutionary, outspoken in appeal in behalf of Communist principles against American institutions."

Now when you saw that article of Carney's in the paper and found that the International Defense group were going to send a delegation, did that further incline your mind that this invasion was a real invasion?

MR. FRAZER: Now, I object. In the first place, there is no article of Carney; there is a newspaper report. In the second place, the International Labor Defense is in no way attached to us——

THE COURT: Oh, I will allow it.

MR. FRAZER: I ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. Were you so impelled?

A. Yes.

MR. FRAZER: Is that from the Fish report, that you were reading?

MR. MATTHEWS: Yes, Mr. Frazer.

THE COURT: It is the same one we had before, isn't it?

MR. MATTHEWS: Yes.

Q. Now, Mr. Mayor, you have also been familiar, both by yourself and with counsel, with the contents of the American Fund for Public Service, also called the Garland Fund?

A. I have.

Q. And from an examination of that fund did you know that that fund has contributed $75,000 to the International Labor Defense?

A. I do.

MR. FRAZER: Now, I object. The Garland Fund is not here in issue in any way.

MR. MATTHEWS: The Garland Fund secretary is Mr. Ernst. He says that he opposed Mr. Ernst, because of his radical proclivities, tendencies, et cetera, et al., and now one of his connections is the Garland Fund, of which he is the treasurer, the Civil Liberties Fund, the Civil Liberties group, of which he is a director. Two of the people who came into Jersey City were going to come in with the Civil Liberties and the International Defense. The Garland Fund report, which has already been used here, and which is reported in the Fish Committee report, shows that Mr. Ernst's Garland Fund gave $75,000 to this Communist organization. I submit that I am entitled to ask the Mayor did that fact also incline his mind to the belief that this invasion was a real invasion, or this proffered invasion.

MR. FRAZER: Might I ask the Mayor at this point whether he has examined this particular volume?

THE WITNESS: You mean——

MR. FRAZER: That I have in my hand?

THE WITNESS: From the Free Public Library? Yes, sir.

MR. MATTHEWS: You notice, Spaulding, don't be mislead, that the reports go a way back to here; see, Spaulding? This is the last report, January 30, 1934. Loans outstanding in 1934. There are all of your directors: Norman Thomas, Benjamin Gitlow, Morris Ernst——

MR. FRAZER: All right.

Now may I ask the Mayor when he looked at that volume?

THE WITNESS: I looked at that yesterday in my office, after we left here, as late as that, and prior to that.

By MR. FRAZER:

Q. When did you first look at it, Mr. Mayor?

A. When it was produced from the library.

Q. When was that?

A. Well, since this case. It was prior to this case being called.

Q. And subsequent to the denial of the permits?

A. No, no; oh, no.

When this uprising started, Counselor, I started to familiarize myself, as I told the Court, by selecting everything——

MR. MATTHEWS: Now, may the question be answered, if your Honor please?

A. (Continuing.) All evidence that we could possibly get control of, to examine into, to see, as to whether or not—what these activities were which would lead to the Civil Liberties and which lead to the CIO, and this was one of the books that we collected.

Q. And when did you get that first?

A. Well, whatever the date is, from the library.

MR. MATTHEWS: Now, that certificate is on my copy. The Mayor has his own copy; and the fact that the certificate is dated now is only for evidential purposes, please, Spaulding. The Mayor had his own copy. Indeed, he first personally said: "John, take it home and read it" to me.

MR. FRAZER: I haven't said anything about that.

MR. MATTHEWS: All right, but I concede that. I don't do those things.

He said he got the Garland Fund book before this trial. In fact, he gave it to me after I came into it; but I got it from Hamill.

MR. FRAZER: I was asking the Mayor when he got it.

MR. MATTHEWS: He said before the trial.

MR. FRAZER: From the public library?

MR. MATTHEWS: Yes, from the public library.

MR. FRAZER: Where? In New York?

MR. MATTHEWS: No, I think Jersey City. You can only take it out at certain times; you have to give it back and take it out again.

MR. FRAZER: What I want to know is when the mayor first got that, to find out—my purpose in asking that is to ascertain whether it did have any effect upon his action on November 29th.

MR. MATTHEWS: That isn't the question; whether or not Mr. Ernst is desirable. The only question as to the November or May 29th, or the Carney invasion, is as to the International Defense Fund.

MR. FRAZER: Can you tell me when you first——

THE WITNESS: I didn't get that prior to the Carney invasion.

MR. FRAZER: No. And did you get it prior to the first of this year?

THE WITNESS: I got that in preparation for answering these charges, and all these invasions and disturbances——

MR. FRAZER: That's when we filed our papers, when you were preparing the case——

THE WITNESS: No, I think it was prior to that. I think it was during this uprising, these troubles that

started. That's been going on close to a year, close to seven or eight months.

MR. FRAZER: Mr. Mayor, as far as I understood—

THE WITNESS: I can't exactly tell you, Counselor, the day and date and hour when we received these.

MR. FRAZER: I don't expect you to. I am not as unreasonable as that.

MR. MATTHEWS: May I at this time say that the mayor has answered, and I take it that Mr. Frazer is examining so as to object to my question.

MR. FRAZER: Well, I just wished to see whether the mayor had this before him as the basis of his mental state when the Jersey City authorities refused permits to the speakers, or whether he got that subsequently, when we had filed our complaint and you were thinking of some kind of an answer to it. Any port in the storm idea.

MR. MATTHEWS: I have no objection to your asking——

MR. FRAZER: That's all right. The mayor answered it, I guess. He said it was some time while these disturbances were going on subsequent to November 29th.

Now, what I asked him now was whether it was prior or subsequent to the rejection of the permits in December.

THE WITNESS: I can't answer that, Counselor. I can't fix any particular date or day.

MR. FRAZER: Then it seems to me that unless it be shown to come within that time, this is not proper cross-examination, as it does not bear upon the mental state.

MR. MATTHEWS: If your Honor please, the International Defense Fund was mentioned in the article. The mayor's investigation of the Fish Committee report long antedated this case, as he said.

THE COURT: Yes, but I thought we were talking now about the other——

MR. MATTHEWS: We are only for the amount of the contribution from the Garland Fund.

MR. FRAZER: That's just exactly it. Here is another effort by Mr. Matthews to prove as a substantive fact things which can be used only for the purpose of showing what the mayor's mind was.

THE COURT: When did the knowledge of the Garland Fund come to his mind?

MR. MATTHEWS: Why, the knowledge of the Garland Fund come to his mind, as he has said already, in reading the Fish report. You see, this Fish report that I have is one that I had certified by Trimble only a week ago. He has his own report.

MR. FRAZER: There is no evidence as to when he first got the Fish report.

MR. MATTHEWS: Yes, he said a year ago, in his testimony, Mr. Frazer; now, after I had connected that with the International Defense Fund, as your Honor probably allowed it, then I asked him, does he know from this report that the contributions were so much, to the International——

MR. FRAZER: He can't know that.

THE COURT: I don't see how that could bear on his state of mind. I think that is part of your affirmative proof.

MR. MATTHEWS: Oh, no, your Honor, because Mr. Ernst—my next question is: And did this contribute to your opinion that Mr. Ernst should not be allowed——

THE COURT: How could it, when he didn't see it until afterwards?

MR. MATTHEWS: Judge Clark, they are insisting that the directors of the Civil Liberties Union are persona non grata now. Now, I want to show why.

THE COURT: I am going to rule again that what is in the future is not admissible.

MR. FRAZER: I might say in this connection that Director Casey, who had charge of the granting of permits——

THE COURT: He talked about the Garland Fund last year. I remember that.

MR. FRAZER: Director Casey said that they made no investigation at that time.

MR. MATTHEWS: I don't care anything about what Director Casey said.

MR. FRAZER: Well, he is the one that had the authority for refusing.

MR. MATTHEWS: I thought you said the mayor had the authority.

MR. FRAZER: No, but he is the one that took it up.

THE COURT: I remember that in Director Casey's case he was talking about the Garland Fund, in the proceedings last year.

MR. MATTHEWS: But not this kind of talk, your Honor. This today hooks up this Civil Liberties Union and Baldwin and Mr. Ernst and Mr. Thomas with the activities that are——

THE COURT: I think if you will examine the record of last year you will find we had this same thing.

MR. MATTHEWS: Well, I am glad——

MR. FRAZER: Yes. It is a regular stock in trade. It comes up and these incendiary remarks are read from the Fish report.

MR. MATTHEWS: Incendiary remarks! Those are American remarks from the Congress of the United States, and if you, Spaulding, don't disagree with your retainer, don't make that statement, because I cannot believe that you disagree with the facts.

MR. FRAZER: I know, but you like to re-enact the facts, as you say, by reading a story which was published some seven years ago, over and over again.

MR. MATTHEWS: Yet the truth never grows old. The real truth never grows old; it is eternal.

MR. FRAZER: Come on, let's get down to the facts of the case.

MR. MATTHEWS: O. K., we have them.

MR. FRAZER: Let's get down to the facts.

By MR. MATTHEWS:

Q. Now, Mr. Mayor, at page 59 of the Fish report which you read, or which I read to you, and dealing with the Garland Fund, you recall that I read you that there was a contribution to the International Labor Defense——

MR. FRAZER: Why reread it?

Q. (Continuing.) —of fourteen thousand—let me follow it—fourteen thousand eight hundred and fifty dollars?

A. I do.

Q. Yes.

Q. I show you a clipping from the *Boston Post* of June 10, 1938, "Children given prizes as Reds." Did you examine that?

A. Yes, sir.

Q. Now, Mr. Mayor——

MR. FRAZER: What, may I ask——

MR. MATTHEWS: (Addressing a member of the press): I don't like you laughing at my questions, young man, and I ask the Court not to have him do it. I don't know what paper you are from, but don't do it.

THE COURT: I am not inclined to control anyone's merriment.

MR. MATTHEWS: I know your Honor wouldn't want any reporter who was supposed to be a dispassionate recorder of the facts interrupting, he can tell me so, if he didn't. (To Mr. Frazer): You will have headlines enough, old dear, to last you for some time to come.

Q. Now, Mr. Mayor, you made the statement in your testimony that the Communists were people who were trying to destroy the United States and destroy all religion. Have you any information about Senator McNaboe, of New York, which together with that article which I show you now helped you to form that opinion which you gave to Mr. Frazer?

A. I have. This covered school children.

Q. Yes.

A. The McNaboe Committee—he is a senator from New York City.

MR. FRAZER: Now, this is not supposed to be offered as facts, is it?

MR. MATTHEWS: No, this is just to explain his statement as to what you wanted to hold him to as his definition of what Communism is.

MR. FRAZER: I didn't ask him anything about what Mr. McNaboe told him.

A. Nobody told me anything, this is fact.

MR. FRAZER: That is just what I am objecting to, Mayor.

MR. MATTHEWS: On which he predicated his statement in the record.

MR. FRAZER: What is the date of this paper, Mr. Matthews, that you just handed the mayor, June 10, 1938, again, sir. Now, I object to any examination

upon the mayor's state of mind based upon matters which he has read during the progress of this trial.

THE COURT: Sustained.

MR. MATTHEWS: That is not the purpose of this question. Read the question, please—why can't the mayor put himself in this record on cross-examination on the facts which impelled him to take the position that he has today and previous to today on this issue against this kind of stuff that are suing him?

MR. FRAZER: Now, I object to that kind of a reference, and I think it is about time that Mr. Matthews be controlled in his language.

MR. ERNST: If your Honor please, this is a court of law. We are determining some issues. I ask that Mr. Matthews withdraw the mark when he says I am "cattle" and "stuff" and "that piece of humanity." I do not resent anything that he says about me except that he is saying it in a court of law and I resent that the forums of the courts of America be used by Mr. Matthews as Jersey City uses the workers, and I ask you, your Honor, to comment on those statements.

THE COURT: I will strike them.

MR. ERNST: I have made no statements about Mr. Matthews personally. I have disregarded his discourtesies. The four other counsel for Mayor Hague were gentlemen. Mr. Matthews sneers, comes over with side remarks, snoops and listens to what we are saying and I ask your Honor to comment on it.

THE COURT: I will strike it.

MR. MATTHEWS: I want to add to that by saying I will put his record as divulged here this morning against mine any time. I have said nothing like he says at all. The day that I started the examination in this case he said to a witness, "Spill it, go to it." That may

be a dignified thing. Then he says I snooped because I heard it. Now, I don't want to talk about him or to him as far as I am concerned, I haven't even referred to him this time, I looked in his direction but I was referring to the petitioners in this case.

MR. ERNST: I take it the same statement applies to your other remarks?

MR. MATTHEWS: No, the other remarks on the record as far as I am concerned stand 100 per cent. unembellished.

MR. ERNST: Your Honor, I ask you to make a statement at this time in respect to the Federal Courts of this nation——

THE COURT: I have always understood, perhaps erroneously, Mr. Matthews, that personalities, whether directed at the parties or at counsel, in a court of law were inappropriate and I will strike them all from the record.

MR. ERNST: Thank you very much, sir.

MR. MATTHEWS: And the same as to his.

MR. ERNST: I made none.

THE WITNESS: Am I permitted to make a statement, Counsel?

MR. ERNST: Let us try a case at law.

MR. MATTHEWS: I object to this gentleman saying "Let's try a case at law." If he is hurt this morning that is no time for his trying to take the sting out of it by an appeal to the newspapers.

THE COURT: Please proceed.

MR. ERNST: I take it the remarks are out of the record, your Honor.

THE COURT: Yes.

MR. MATTHEWS: And his remarks concerning me.

MR. ERNST: If any.

THE COURT: All personal remarks, they have no place in a lawsuit.

MR. MATTHEWS: Is there a question pending?

(Question and answer repeated by the reporter.)

THE COURT: Isn't it a fact that the McNaboe Committee made some report almost a year ago?

MR. MATTHEWS: They did not make any report. What the mayor wants to say is that the McNaboe Committee organized—he wants to tell the Court what the situation was—I don't want to tell the Court his testimony, and it dealt with this proposition.

A. It dealt with school children, it dealt with that Morris Ernst stopped the investigation. The committee never met, the committee was never permitted to meet. I want to make the statement, I want to show the influence that the Communists has got in this country. I never heard of such a thing, that a committee can be silenced that is organized to investigate Communism in the public school system and the institutions——

MR. FRAZER: If it please the Court, will you ask the witness to desist?

THE COURT: There is no evidence to that effect.

MR. FRAZER: Will you strike those remarks from the record, if it please the Court?

A. Do you mean to tell me I am not permitted to make a statement here concerning the prosecutor in this case?

MR. FRAZER: May I ask the Court that the witness do not make any more remarks and may I move that the remarks be stricken?

THE COURT: Yes.

MR. MATTHEWS: Do I understand that the mayor is not to tell what the connection is between the children and the deprivation——

THE COURT: My ruling is that that newspaper article was published after the trial began. I therefore sustain the objection. You may have an exception.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Well, the Reich—may I argue just a moment—the Reich article yesterday was offered; he was asked whether he believed in certain things predicated on that article. Your Honor well remembers that.

A. They asked me about the Harvey statement, your Honor. That involves public schools and Harvey charged the public schools with Communism.

THE COURT: Please, please. I cannot see the purpose of it. I understand—I have that report right here, someone sent it to me. Why don't you offer the report?

MR. MATTHEWS: There was no report.

A. There was never a report, your Honor; the committee never met.

MR. MATTHEWS: The committee never organized. That, your Honor, is an entirely different matter. That is in the Gerson matter, I suppose.

THE COURT: No, the report they sent to me was widely advertised in the newspapers as having been made by a committee of the Massachusetts legislature.

MR. MATTHEWS: But the McNaboe was New York.

THE COURT: That is a Boston paper, isn't it?

MR. MATTHEWS: Yes, but I asked him if that—I called his attention to that and asked if he had any information about McNaboe with reference to this.

THE COURT: I think I read that article, somewhat hastily, but my impression is it has something to do with the report I have in my hand.

MR. MATTHEWS: It has, your Honor.

THE COURT: Nothing about Senator McNaboe.

MR. MATTHEWS: That would be competent as cross-examination.

THE COURT: You will have to offer Senator McNaboe. We cannot go on having these hearsay statements. If you want to call him as to what he says was done in Boston——

MR. MATTHEWS: Judge please, there is no report; he wanted to show——

THE COURT: There is the report, Mr. Matthews; I have it in my hand.

MR. MATTHEWS: No, please, Judge.

MR. FRAZER: I object to counsel stating what the witness would have stated had he been permitted to go on. Another speech. I object to another speech.

MR. MATTHEWS: I am not going to offer anything that he would have said at all. The purpose of this question is to disclose what the Mayor was asked about on direct examination, namely, about children and religion.

THE COURT: Well, you will have to give me in the recess the question that you particularly referred to, and let me read that newspaper article.

MR. MATTHEWS: Yes. Well, I will get you that question because that is a question that one of my associates propounded.

THE COURT: All right, give me the page and I will read it for my own record.

MR. MATTHEWS: Yes, Judge. That isn't marked yet, I understand. I can get you that reference at recess.

THE COURT: We will adjourn now until two o'clock.

THE COURT: You might get me the reference to the Nazi thing also.

(Recess.)

AFTERNOON SESSION.

2:10 P. M.

THE WITNESS: I want to apologize, Judge.

THE COURT: That's all right. I was very irregular yesterday.

MR. MATTHEWS: We are sorry, but we couldn't possibly get along with the mayor; everybody stopping him.

THE COURT: That's all right. I was to blame yesterday.

MR. ERNST: If your Honor please, I rise to move the Court on a matter of peculiar importance, and I hereby move that you hold the witness Frank Hague in contempt of court for the following reasons and set of circumstances:

Evidence was excluded by your Honor in relation to one McNaboe. I was confronted a few minutes ago by members of the press who read to me what purported to be a statement which Frank Hague uttered to them in a conference by him. The statement, if your Honor please, directed itself to the very facts which were denied admission in this case. But further, sir,

that statement, as it was read to me by the members of the press at the conference, accused me, a member of the bar, of having wrecked a senatorial investigation committee in the State of New York, of having been responsible for calling it off.

That means, if your Honor please, that I, not a member of the legislature, was instrumental, and it could only have been by nefarious means, in calling off all of the members, or a majority thereof, of a legislative committee of the State of New York.

Now I am not concerned with the resentment that they may feel at the statement, but this is just the last step in a campaign of not trying this case in court.

May I add, your Honor, that the members of the press asked me if I wished to comment on the statement. I told them that I did, and I told them that our comment was that we were trying this case in a court of law and that our statements would be produced through witnesses on the stand before your Honor.

MR. ERNST: That statement of this witness at the conference which he called has been circulated to the press. We have a similar case on the same point of law now pending in the courts of the State of New York. I do not ask your Honor to pass on this contempt motion at this moment, I wish to brief the matter for you, and I refer you at this momnet to a case now pending before Referee John Kirkland Clark, sitting by appointment of a Judge of the Supreme Court of the State of New York, where it is charged by one of the attorneys before him that statements were issued by the other attorney or by the parties, I do not recall which, circulated in print, and that motion is now pending in that case. I therefore charge that contempt has been committed. I move that you hold the witness for contempt and I ask the opportunity of supplying a brief to you by Tuesday of next week.

THE COURT: I suppose you should file something in the form of affidavits or otherwise.

MR. ERNST: I have this situation——

THE COURT: With the motion papers.

MR. ERNST: May I call this to your attention: I do not know the law in the State of New Jersey with regard to the extent of the privilege of a reporter; it will be my affidavit that they read me the statement.

THE COURT: There is a federal provision, I think, about contempt of court in federal courts, Section 268 of the Code, not the U. S. Code Annotated, the Judicial Code which covers contempt in criminal courts. My recollection with respect to witnesses or attorneys is that if they make any statement it has to be an attempt to influence the court, I mean that is my recollection of the law, but I haven't looked it up recently.

MR. ERNST: That may be a secondary question to which the cases, as I recall it, direct themselves, because that goes to the question of motive and the motive might have only been to put something in print in the newspapers, so that when the witness reads it again it can be claimed that he made up his mind on the strength of what he read in the newspapers.

MR. MATTHEWS: I object to that statement. I don't know anything about this that Mr. Ernst is informed about.

MR. ERNST: May I say that I am informed that none of the counsel for the witness were present at the conference. I overlooked it.

MR. MATTHEWS: As far as reading it or anything of the sort, I think the mayor can tell about it if he has had any conference.

THE WITNESS: Am I permitted to answer?

THE COURT: Mayor Hague, you can answer the affidavits if they are filed.

THE WITNESS: If I offended the Court I want to apologize to the Court; I done it with no intention of offending this Court, your Honor. I have the utmost respect for the Court.

MR. MATTHEWS: I know nothing about it.

A. It was a very important statement, your Honor, to the country. I felt that the Communists, to silence a committee that sets itself up to investigate Communism in public schools of the State of New York, and that they was silenced by that man, as I charge it, then I say it is a serious question for the country to know that the Communists can sway that type of influence.

THE COURT: You will file the memorandum.

MR. ERNST: Well, the mayor having volunteered the statement, may I say something too?

MR. MATTHEWS: Will you wait till I finish my examination?

MR. ERNST: No, this is not in connection with the direct or cross-examination. This is a little speech in addition to——

THE WITNESS: Yes, but he made a little speech too.

MR. ERNST: Would you let me examine you on your statement that I caused a legislative committee of the State of New York not to do its duty?

THE WITNESS: You are going to examine me. You will have a chance to examine me, and I am not afraid of you; you must understand that.

MR. ERNST: All right. I will do it in due time.

THE WITNESS: I have no fear when I am taking the side of the American people.

THE COURT: Give counsel a copy of the affidavits, will you, Mr. Ernst, when you file them?

MR. ERNST: I shall, sir.

MR. MATTHEWS: Shall I proceed, your Honor?

THE COURT: Yes, if you will.

CROSS-EXAMINATION (Continued).

By MR. MATTHEWS:

Q. Mr. Mayor, at page 1461 of your testimony, Mr. Frazer referred to Mr. Baldwin's conviction in Passaic County, and you referred to the fact that that conviction was sustained by Chief Justices Gummere, Black and Lloyd in an opinion by Black.

A. That's in the branch.

Q. Yes.

MR. FRAZER: If it please the Court, when that statement was made, the Supreme Court had been reversed by the Court of Errors and Appeals, a fact which the mayor very well knew, because he admitted it on the stand, and even told me who the men below were, and said they were pretty good judges, and I called his attention to the judges above——

MR. MATTHEWS: No, what I want——

MR. FRAZER: —and he admitted they were pretty good judges, too.

MR. MATTHEWS: I am sorry.

MR. FRAZER: But I see no relevancy in referring to the Supreme Court opinion.

MR. MATTHEWS: What I want to do; if your Honor please, is ask the mayor whether or not his opinion of unjust assembly or of public assembly consones with the opinion in this case?

THE COURT: Well, perhaps it does, but——

MR. MATTHEWS: Then, your Honor, I want to take the opinion, just as they did, the opinion on appeal, and I want to show on this record and through this witness that his opinion——

THE COURT: Excuse me, Mr. Matthews. I want to put on the record the proper section governing contempt. It is section 385 of the U. S. Code Annotated. Yes, I knew there was one case; I had it once before; Lieber v. The United States, 170 Federal, 881. The United States Attorney was charged with issuing a statement seeking to influence a judge.

MR. MATTHEWS: Now, if your Honor please——

THE COURT: I beg your pardon, Mr. Matthews.

MR. MATTHEWS: That's all right, pardon me. What I want to do is read the definition of lawful assembly from both opinions, because both opinions quote the same source for unlawful assembly, and then I want to ask the mayor whether or not it was his opinion as to the right or non-right of people to assemble in Jersey City in a public square.

THE COURT: Well, have you indicated that the mayor had read those two statements?

MR. MATTHEWS: He has actually said so, your Honor, and he called Dean Frazer's attention to the upper court case, too.

MR. FRAZER: He didn't say that he had read them. He said there were such—as I recall the testimony, I don't wish to misquote it.

MR. MATTHEWS: You asked him if he was familiar with it, and you read from the opinion and he said yes.

MR. FRAZER: I read from the other opinion.

THE WITNESS: Justice Kalisch's opinion.

MR. FRAZER: Justice Kalisch's opinion, yes. I read from the other opinion.

THE WITNESS: You didn't read Justice Black's.

MR. FRAZER: What I asked him on direct was, why it was that——

THE COURT: Did he say he did not read Justice Black's opinion?

MR. MATTHEWS: Justice Black's opinion had not been read, he said. Justice Kalisch's opinion.

THE COURT: Well, do we need that?

MR. MATTHEWS: Well, we need it to this extent—

THE COURT: I thought he said he never read it.

THE WITNESS: No, I said—he read Justice Kalisch's opinion to me.

THE COURT: Oh. Well, did he read Justice Black's opinion?

MR. FRAZER: I don't think the mayor has said yet that he ever did. He said he was familiar with that opinion——

THE WITNESS: I am familiar with the case in the branch and in the Court of Appeals.

MR. FRAZER: Yes, but you have never read the opinion, either of them, have you?

THE WITNESS: Yes, I went over it frequently. I find it necessary that I must familiarize myself with all these opinions, because I am confronted with them every day.

MR. FRAZER: Well, I supposed you had been advised, Mayor, by your law department, as to it.

THE WITNESS: The law department, Counselor, as a rule, is always conferring with me and reading these opinions. and I am going over them frequently.

Q. Now, in that opinion at page 45, it is reported in 104 New Jersey Law at page 45, it is reported 104 New Jersey Law:

"An unlawful assembly at common law has been defined in the reported cases and by text-book writers of recognized authority, thus:

"Unlawful assembly in general—an unlawful assembly has been defined to be an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighborhood of the assembly reasonable grounds to apprehend a breach of the peace in consequence of it.

"Professor Wharton defines unlawful assembly thus: Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose; and this has been held to be the case with disorder got up suddenly, though concertedly, at a town meeting, and at a social assembling for dancing. In determining the question of terror, it has been said that the jury are to consider whether natural and firm men, in charge of families, would have under the circumstances cause for anxiety; and in testing this it is necessary to take into account the hour at which the parties meet, the language used by them, and the acts done. An unlawful assembly does not in itself involve any overt act. If overt acts of violence are attempted the offense is a riot."

Were you conversant with that statement in Justice Black's opinion?

A. Yes, sir.

THE COURT: I think it is from Blackstone, as a matter of fact, isn't it?

MR. MATTHEWS: No, that's from Wharton, your Honor. Now whether Wharton took it from our old friend, I don't know.

MR. FRAZER: Yes, I think he probably did.

THE COURT: Well, we will try to find out.

MR. MATTHEWS: Yes.

Q. Now you also said that you were familiar with the opinion of Justice Kalisch—that is in the same volume, in the Butterworth case; the Butterworth is 104 New Jersey Law at page 582. The Justice says:

"The result of a careful examination of the cases dealing with this particular branch of the criminal law may be tersely summed up as follows: At common law, any gathering together of three or more persons, with intent to disturb the public peace, accompanied by some overt act or acts to effect that intent, was an unlawful assembly."

Then the Court went on; citing the Cunninghame case:

"Judge Charles in charging the jury said: Now, with regard to an unlawful assembly, what is an unlawful assembly? That has been laid down by the very highest authorities in these terms: An unlawful assembly is an assembly of persons with the intention of carrying out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighborhood of such assembly ground to apprehend a breach of the peace in consequence of it. An unlawful assembly, according to the common opinion, is a disturbance of the peace by persons barely assembling together with an intention to do a thing, which, if it were executed, would make them rioters, but neither actually executing it or making a motion towards its execution."

Now, were you familiar with that statement of unlawful assembly as recited in Justice Kalisch's opinion?

A. I was.

Q. And you were familiar, were you not, with the decision in Justice Kalisch's case overruling the conviction of Butterworth and the rest of them, and were you familiar with this statement of the Court in conclusion, and giving the ground for the reversal:

"As has already been mentioned, no circumstances were proven which tended to reasonably indicate that there was not only a common purpose on part of the defendants to disturb the public peace, that there was a well-founded threatened danger of a breach of the public peace.

"The trend of the testimony was that the object of the meeting was to protest publicly against action taken by the police authorities which prevented the strikers from holding their meetings to vent their grievances in a public hall. The object of the meeting, therefore, was per se not an unlawful one, and an indictment for unlawful assembly could not properly be predicated upon the mere fact of holding a meeting in a public place. It was essential in order to constitute an offense of 'unlawful assembly' that the meeting be held and conducted in such a manner as to reasonably create in the minds of firm and courageous persons a well-founded fear of threatening danger to the public peace. We find an utter absence of any such proof.

"Again referring to one of the incidents——" and the Court referred to that.

"From the record before us we find nothing in the statement of the facts contained therein which warranted the finding by the trial judge that the accused were guilty of the offense of unlawful assembly."

Now, Mr. Mayor, were you conversant that those were the findings of Justice Kalisch in brief summarized?

A. Yes, sir.

Q. Now, in all of the instances cited in your testimony and referred to in questions to you on the stand of permits being refused, those permits were refused, were they not, in order to prevent disorder?

A. They were.

Q. And in both the case of Mr. Thomas and Mr. O'Connell they attempted to hold the meeting when the permit had been denied, isn't that correct?

A. Right.

Q. And at that time that O'Connell was denied the permit I understood you to say on direct examination—am I correct—that you had information tending to show that O'Connell was a person who would incite to riot.

MR. FRAZER: I don't recall any such statement. Have you the reference, Mr. Matthews?

MR. MATTHEWS: I am sorry, I haven't the testimony reference there, but I would be glad to get it for you.

Q. I will reframe the question. Did you have information about Mr. O'Connell which led you to suppose that his presence at a meeting would cause disorder in Jersey City?

A. Yes, sir.

Q. Now, Mr. Mayor, when Dean Frazer read you from DeJonge v. State of Oregon, reported in 57 Supreme Court, at page 255, etc., Mr. Frazer read this to you—will you listen carefully now—at page 260, gentlemen: "It follows from these considerations that consistently with the Federal Constitution peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be observed, is not as to the auspices under which the meeting is held, but as to its purpose, not as to the relations of the speaker but whether their ut-

terances transcend the bounds of the freedom of speech which the Constitution protects."

Now, in any of the instances where these gentlemen referred to in the testimony requested permits to speak in Jersey City had you before you, either from newspapers or documents or from information which you considered reliable, utterances of theirs which transcended the bounds of the freedom of speech which the Constitution protects?

MR. FRAZER: Just a moment. We are getting into another of these factual situations again. He says "Did you have utterances." Did you believe—if you wish to, that they had made statements or something of that kind, but no facts.

MR. MATTHEWS: I am only crossing him on what Mr. Frazer asked.

THE COURT: You may answer.

Q. You may answer, the Court said. Did you have such utterances in your mind at that time?

A. Did you have what?

Q. Utterances that Mr. Baldwin——

A. That rendered them undesirable?

Q. Speeches that transcended the bounds of free speech under the Constitution.

MR. FRAZER: Just a moment, I don't think that this witness can be called upon to come to a legal conclusion as to what transcends the Constitution.

MR. MATTHEWS: I agree with you.

THE COURT: The question certain squinted in that direction.

MR. MATTHEWS: Omni comparatio claudicat.

Q. Suppose I reframe it. In refusing permits to Mr. O'Connell and Mr. Thomas had you knowledge, either from the prints or from documentary evidence or reports of speeches, of utterances made by them which in your opinion transcended the bounds of free speech?

MR. FRAZER: No, I don't think he can ask as to what transcends the bounds. The Mayor has put it better in his counter-question to counsel "Did he believe these men were of a kind which in his mind made them undesirable."

MR. MATTHEWS: That is very lovely of you to frame my question, Spaulding. Now, certainly what the Mayor thought of what these utterances were—he has been tested by Mr. Frazer and Mr. Ernst on direct and asked "Did you rely on that?"

THE COURT: Yes, I will allow that.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Did you have information that they had made utterances which transcended the bounds of free speech?

A. In Mr. Baldwin's case, I am familiar with the Fish Committee's investigation of Mr. Baldwin, I am familiar with his utterances under oath, his statement under oath answering the questions of the chairman when he said he believed in the overthrow of the Government, when he said he believed——

MR. FRAZER: Now, I beg your pardon, Mr. Mayor, but that wasn't the question.

(Question repeated by the reporter.)

MR. FRAZER: Now, that is capable of a yes or no answer.

Q. You can answer yes or no, that's all I want.

A. Yes.

Q. Now, Mr. Mayor, particularly did you tell Mr. Frazer in your direct examination that you were conversant with the opinion of Chief Justice Gummere, the late lamented Chief Justice, in Harwood v. Tremble, reported in 97 N. J. Law page 173; is that right?

A. The Rahway case. I am familiar with the Chief Justice's opinion.

Q. In that opinion were you familiar with this statement of the law—this being a Court of Errors and Appeals decision, your Honor.

THE COURT: I have read it.

Q. "The streets of a city are common highways primarily designed for the use of the public in passing and repassing, and in such temporary occupancy as is incidental to the exercise of those rights. No one is justified in obstructing the public street by collecting therein a large assemblage of people for the purpose of delivering an address to them. The common highways of the state are not designed for the purpose of holding public meetings therein and anyone who attempts to do this without having first obtained permission from the public authorities in charge of such highways commits a public nuisance. The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty than it permits him to occupy in invitem the private property of a fellow citizen for the same purpose. In order to protect the public in the full enjoyment of the city streets the municipal authorities are clothed with the power of seeing that such enjoyment is not necessarily interfered with and in the exercise of that power to take all reasonable steps to prevent such interference."

Were you conversant with that?

A. Yes, sir.

Q. And in the instances of the refusal of permits it was a refusal in your belief which was confirmed by this opinion, by the ordinance of your city and by the state laws, is that right?

MR. FRAZER: Now, Mr. Matthews is testifying completely for the witness.

MR. MATTHEWS: No, I am cross-examining him on your direct.

MR. FRAZER: I had no direct upon the subject of the Tremble case. The Mayor merely inquired whether I was referring to the Rahway case and I said I was not.

Q. And, of course, Mr. Mayor, as I understand it, you understand, don't you, from that case that those deal entirely with meetings in public streets and not in halls?

A. I did.

MR. MATTHEWS: May I have, Mr. Frazer please, the exhibit which is your letter to the Mayor?

MR. FRAZER: It is in the clerk's hands.

Q. Now, I show you P-13, Mr. Frazer's letter to the Honorable Daniel J. Casey, etc., of December 23, 1937, which has been marked P-13 in this case, and I ask you whether or not in Mr. Frazer's letter he did not say, "The meeting will be addresed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri, and John Kiesler."

A. Yes, sir.

Q. That letter was dated December 23, 1937, was it not?

A. Yes.

MR. FRAZER: That letter is in evidence and he has already so testified, Mr. Matthews.

MR. MATTHEWS: All right. My question is directed to that, for the record.

Q. At the time that you received that letter were you in possession of information that Jerry O'Connell and Roger N. Baldwin and William J. Carney were persons who were likely to create disorder in your community if permits were given to them?

A. I was.

Q. I now show you Exhibit 12 in this case, letter from Mr. Rothbard to Daniel J. Casey, December 13, 1937, and I ask you if in that letter you see that "The undersigned will have as speakers Congressmen Maverick, Jerry O'Connell, Allen and Morris I. Ernst," is that correct?

A. I do.

Q. And at that time did you have information in your possession that the presence of Mr. O'Connell or Mr. Ernst as a speaker at a public highway meeting in your community would be such presence as would be likely to create disorder?

A. I did.

Q. And is that why the permits were refused?

A. Yes.

Q. Yesterday I think it was, but anyway shortly back, Mr. Ernst inquired of you about SWOC, I think he called it, Steel Workers Organizing Committee. Did you have any correspondence with the Steel Workers Organizing Committee in Jersey City recently?

MR. FRAZER: Did I refer to the SWOC?

MR. MATTHEWS: Not you, Mr. Ernst. I can get it for you out of the testimony.

THE COURT: I can tell you what it was, I think I can at least; it was a list of the CIO unions.

MR. MATTHEWS: That was Communistic.

MR. ERNST: Oh, oh.

THE COURT: It was a list of the CIO unions by name.

MR. MATTHEWS: No, you said you wanted such a list, didn't you?

THE COURT: No, Mr. Ernst referred to such a list, I think Mr. Ernst probably will remember.

MR. FRAZER: I know of no examination.

MR. MATTHEWS: Oh, yes, because I remember the name SWOC.

THE COURT: What was it, Mr. Ernst, because that name struck me also?

MR. ERNST: It was connected up with the testimony that Frank Hague, as vice-chairman of the National Democratic Committee, would repudiate contributions from various CIO unions.

THE COURT: Naming them.

MR. ERNST: Yes, I specified particularly SWOC and the rubber workers in the case of Frank Murphy and the United Mine in the case of Senator Barkley.

MR. MATTHEWS: That is not the testimony that I have in mind.

Q. Have you a CIO union in the steel workers in Jersey City?

A. Yes, Crucible.

Q. Now, you made the statement, Mr. Mayor, on direct examination that you have had no trouble with legitimate organizations of union men in Jersey City? Is that correct?

A. That is true.

Q. Did you have any relationship of any kind with the Steel Workers Organizing Committee in Jersey City?

MR. FRAZER: I don't think that is cross-examination.

MR. MATTHEWS: I do.

MR. FRAZER: I don't know of any question that was asked as to the Mayor's relations with that union.

MR. MATTHEWS: Now, if your Honor please——

MR. FRAZER: I would like to have a reference to the place.

THE COURT: I don't remember any testimony about the Crucible Steel, I may be wrong, Mr. Matthews.

MR. MATTHEWS: I am not addressing it on that point. I want to show now from the Mayor, those facts on this cross-examination which were not brought out on direct, indeed were not sought, which would show that his relationship with all types of organizing in Jersey City that was legitimate was a relationship of friendliness and helpfulness, and I have a letter signed by Mr. Samuel McCombs, president of Local 1339 of the Steel Workers Organizing Committee, which will carry out that statement to the Court, which will show the Mayor's attitude toward the labor people in this community, which has been questioned on greatly in direct examination.

THE COURT: I think that is a matter of defense.

MR. MATTHEWS: Oh, no, it is only to show—they have tried to leave an opinion from this witness, their own witness, you know—they have tried to leave an opinion that he had no relationships with organized labor in this community except the relationship of preventing picketing. Now I want to show by this letter what the relationships were.

THE COURT: Is the letter from a CIO union?

MR. MATTHEWS: Yes, from the Steel Workers Organizing Committee, CIO, Lodge number so and so, in Jersey City.

MR. FRAZER: If he wants to prove what he has received from that committee, if it is relevant as a matter of defense, he can do so. I did not examine the Mayor upon that at all, neither did Mr. Ernst. If they want to put that on as a matter of defense they are free to do so.

MR. MATTHEWS: We are putting in no defense now.

MR. FRAZER: Then, we will bring up the question of its relevancy.

THE COURT: I don't think there is any question it is a matter of defense, Mr. Matthews.

MR. MATTHEWS: If your Honor please, may I argue with you a bit on that?

THE COURT: I don't quite understand its purpose. Isn't this union a part of the organization of which Mr. Carney is the head?

MR. MATTHEWS: I don't know anything about Mr. Carney in that union, but I wanted to show——

THE COURT: Well, it says on the letterhead—of course, there is no jury here, so I don't think we need to be mysterious about it.

MR. MATTHEWS: That's all right.

THE COURT: It says on the letterhead C. I. O.

MR. MATTHEWS: Yes, that's right; Mayor Hague has said that it isn't the rank and file of the CIO that he quarrels with, but it is certain leaders among them, and he mentioned those.

Now, through that letter I want to show how intimate his relationships were, and how decent were the amenities between both the organizers and the Mayor in his city.

MR. FRAZER: That may be a proper thing in defense.

THE COURT: Well, let's have the man here. What's his name, Mr. Matthews? I can't read it.

MR. MATTHEWS: There isn't any necessity of that.

MR. FRAZER: I think he should be called, if you are going to put the letter in.

THE COURT: Yes. What's his name?

MR. MATTHEWS: McComb.

THE COURT: I think Mr. McComb should be a defense witness. I will rule against that.

MR. MATTHEWS: Your Honor will allow me an exception?

THE COURT: You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

MR. MATTHEWS: May I put on the record the purpose, without stating what is in the letter?

THE COURT: Just put the letter in for identification.

MR. MATTHEWS: I don't care to offer it for identification at this time.

THE COURT: All right.

MR. MATTHEWS: So long as you don't allow it used.

THE COURT: All right.

MR. FRAZER: Might I mark it for identification?

MR. MATTHEWS: No. You subpœna it, Spauld.

Q. I show you a letter, the Millinery Workers Union—no, I had better show you the original, because it is a photostat.

MR. FRAZER: Now, we have no Millinery Workers Union, even mentioned in the case.

MR. MATTHEWS: You have sweat shops, though, and if you will just be a moment patient, don't try to bar everything out, I will give it to you.

MR. FRAZER: Well, Mr. Matthews, if you want to start your defense now, that's another matter.

MR. MATTHEWS: Oh, Spauld, behave, now, like a good boy.

Q. Are you familiar, just say yes or no, to this, with this letter which I show you from the Milinery Workers Union, addressed to Commissioner Casey at the City Hall, dated June 13, 1938?

MR. FRAZER: 1938?

MR. MATTHEWS: 1938, this year, this month, last week; the day before Flag Day; this week, wasn't it?

MR. FRAZER: It is Monday, eh?

MR. MATTHEWS: Yes.

A. Yes, sir.
Q. Do you know the Atlas Hat Company in your city?
A. Only just by reputation.

MR. FRAZER: This is wholly irrelevant.

THE COURT: May I see that letter, too?

MR. MATTHEWS: Pardon me. Yes, your Honor, I am sorry.

THE COURT: That's all right.

MR. FRAZER: There has been no direct examination about the Atlas Hat Company.

MR. MATTHEWS: There was a lot of testimony here that the Mayor was preventing the organization of sweat shops. That's a letter to show how he co-operated and how they praised him for having driven a sweat shop out.

MR. FRAZER: Now, Mr. Matthews has made another speech.

MR. MATTHEWS: No, that's just a statement.

MR. FRAZER: No.

THE COURT: Well, I think of course, Mr. Matthews, you will have to call a witness, but I think the Mayor stated at some length his position about sweat shops.

MR. MATTHEWS: Can't I cross-examine on that?

THE COURT: No.

MR. FRAZER: Not cross-examine the Mayor as to testimony of other witnesses. That's what you are attempting to do.

MR. MATTHEWS: Now, listen; I am talking to the Court. Can't I cross-examine the Mayor? Can't I cross-examine the Mayor on what he has done about sweat shops? Because——

THE COURT: I think he said with some clarity what he had done about them and what he thought about them.

MR. MATTHEWS: Let me just ask this question and it can be objected to, if he wants to.

Q. Through your co-operation and the co-operation of your department was the Millinery Workers Union organized and did they receive a six dollar a week increase——

MR. FRAZER: I object.

Q. (Continuing.) —and a thirty-five hour week——

MR. FRAZER: I object, I object, if the Court please.

THE COURT: You will have to call somebody within whose knowledge those facts are. You may have an exception.

MR. MATTHEWS: All right. I ask for an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

MR. MATTHEWS: Now, with all due respect to you, Spaulding, I wish that I could be uninterrupted by the remarks back there.

MR. FRAZER: He was speaking to me.

MR. MATTHEWS: I know he was, but so loudly that he was interrupting me.

MR. FRAZER: I am sorry.

MR. MATTHEWS: I know you are. I believe in your sorrow.

Q. Now, Mr. Mayor, at page 1510 of your testimony Mr. Frazer read you a letter to Senator Stout, the Democratic State Senator from the County of Hudson and our state, and that letter had to do—it was from you to him, as I recall it—with the anti-injunction bill that was then pending in the legislature or about to be introduced, and you said you would like to be heard on the anti-injunction bill. They didn't want to hear you. I do. What is it?

A. The anti-injunction bill has been a bone of contention for a long while in this state. It has appeared in the legislature so frequently every year, that it become a public question. The day, the year, rather, that is, the month of the receipt of my letter, it had passed the House and it was in the Senate, and they were endeavoring—that is, the labor group—that is, the CIO and the American Federation of Labor was endeavoring to obtain the Democratic vote to pass it in the Senate. Upon examination I realized that to strip the Court of Chancery of that right and to permit the industries and business of our city to fall the victims that other industries and business has met with in other cities and other states, that it mean destruction to the workingman. That is, it would drive out from our city hundreds of industries that would cause the unemployment of thousands and thousands of our citizens. It was so drastic that I was fearful of permitting the Democratic party to assume the responsibility of the passage of this bill, and I wrote Senator Stout calling his attention to how drastic the bill was, and what it would mean of driving out of industry and what it would mean of crippling the court;

the only remedy that the business people and the industry had to protect their interests and to reguate the labor disputes. The vote of the Democrats defeated the bill. That's the story of the anti-injunction bill.

Q. Now, have you been heard as sufficiently as you wanted to be on direct examination?

A. Yes.

THE COURT: The City Clerk wants to talk to the Mayor about some municipal business.

MR. MATTHEWS: All right. May we have a five-minute adjournment? I am going out.

THE COURT: All right, we will take a ten-minute adjournment.

(Short recess.)

(After short recess.)

THE COURT: I will tell counsel, Dean Frazer and Mr. Ernst: Counsel for Jersey City, the Mayor, Mr. O'Mara, Mr. Matthews and Mr. Hershenstein have advised me that there is a very important tax hearing this afternoon which is of vital interest to the taxpayers of Jersey City, so that if it meets with your approval I will adjourn court.

MR. FRAZER: Well, might we ask then, if the Mayor can not go on, why could we not argue the subpœna issues this afternoon?

MR. MATTHEWS: I haven't any preparation to do it.

THE COURT: Well, let the Mayor go anyway. I understand it is advisable to let him go anyway.

MR. MATTHEWS: If your Honor please, I am not prepared to do it, and I think your Honor will allow—I have been on my feet here since ten o'clock this morning, and it isn't any desire to delay; if your Honor will hear it on Monday, I will be very, very glad to

do it. In fact, if Mr O'Mara can take it over now and do it.

THE COURT: He is right there.

MR. MATTHEWS: I mean if he has prepared on it. I don't know.

MR. O'MARA: No, I haven't prepared an argument.

MR. ERNST: You Honor please, the matter of the contempt argument was set down by you, I think, for last Tuesday.

MR. FRAZER: The subpœnas.

THE COURT: You said contempt, you mean subpœnas?

MR. ERNST: Pardon me, yes. As I understand it, the court set down for last Tuesday argument on the matter of the subpœnas. It seems to me if we are to adjourn now because we want to meet the Mayor's convenience and we will do that cheerfully, it does seem to me there can be no element of surprise; if the papers are not in court we might wait until they are sent over. I think we are entitled to the return courtesy of having this argument now.

MR. O'MARA: If your Honor please, may I say just a word on that issue as to the matter of surprise? Mr. Hershenstein and myself came to Mr. Matthews' office on last Monday afternoon for the purpose of preparing the argument on this motion on the subpœnas. At that time we were advised that Mr. Ernst had requested an adjournment of the motion. Therefore, instead of preparing the argument of the motion on the subpœnas we prepared by going over the record of the testimony which had been taken for further prosecution of the case. Then during the progress of the case, I think it was yesterday or perhaps it was the day before, when the question of the argument on the subpœnas came

up, your Honor set the matter over until Monday or Tuesday of next week.

THE COURT: Monday.

MR. O'MARA: Monday, was it, of next week, and so all our time in the meantime has been given to the preparation of the taking of the testimony in the case and we are not prepared.

THE COURT: I was wondering if we couldn't sort out among the subpœnas what they are going to involve, I mean what you are going to object to.

MR. ERNST: We are going to move to quash the subpœnas of Harry Ward, William Carney, Roger N. Baldwin and Morris Ernst. We are not representing the persons who have further subpœnas which may have been issued.

THE COURT: Those are the only four?

MR. ERNST: Those are the ones that we are concerned with.

THE COURT: Now, are you moving to quash the subpœnas entirely or just in part?

MR. ERNST: Moving to quash them entirely. It may be that the counsel for the defendants may be able to write some kind of a new subpœna.

THE COURT: The reason I said that I understood they were subpœnas duces tecum that you were interested in.

MR. ERNST: Yes; we are going to move to quash them in their entirety. The cases are clear on it. If Mr. O'Mara is really not prepared to argue I imagine we will have to extend to him the courtesy of putting it over. I take it, Mr. O'Mara, that you will go on with the motion on the subpœnas on Monday morning the first thing.

MR. O'MARA: If the Judge sets it down.

THE COURT: At 12 o'clock, because I have a couple of motions.

MR. MATTHEWS: Will the actual trial go on?

THE COURT: No, not until Tuesday.

MR. O'MARA: And what time does your Honor set it?

THE COURT: Twelve o'clock. Now, may I have the subpœnas over Sunday or copies of them?

MR. ERNST: Have you copies of the subpœnas?

MR. HERSHENSTEIN: Yes. Just give us the names.

MR. ERNST: William Carney, Roger Baldwin, Harry Ward, Morris Ernst, and I am not clear as to Arthur Garfield Hays. There was talk that he had been served, but I am not sure.

MR. ROONEY: He was served; he was served.

THE COURT: He was here personally the other day, I remember.

MR. ERNST: Yes. If he was served with a subpœna duces tecum, we will represent him.

MR. ROONEY: Do you represent Norman Thomas, too?

MR. ERNST: No, Mr. Morris Shapiro will appear as attorney for Norman Thomas.

MR. ROONEY: Do you represent the Editor of the *Daily Worker*?

MR. ERNST: We do not, we represent on one else in the matter. Those are your witnesses.

MR. HERSHENSTEIN: We will have those which you have just read off.

MR. ERNST: Will you get me copies, if I give these to the Judge?

THE COURT: I will return them to you on Monday.

MR. ERNST: Yes. I just thought we might want them.

THE COURT: Well, do you want them over Sunday?

MR. ERNST: I will give you my four subpœnas now.

THE COURT: Yes. Well, you are supplied with copies then.

MR. ERNST: I will get copies from you then.

MR. HERSHENSTEIN: Yes.

Mr. Ernst, when do you want these copies?

MR. ERNST: If you could get them in the mail tonight and in my office in the morning, it would be helpful.

MR. HERSHENSTEIN: We will send them to you.

THE COURT: Is that satisfactory?

MR. ERNST: Yes.

THE COURT: All right. We will have the argument beginning at twelve o'clock, and it will either be decided that day or the next morning by the court.

We will adjourn now until twelve o'clock on Monday.

MR. MATTHEWS: Your Honor has adjourned the case until then or——

THE COURT: No, the testimony will be resumed on Tuesday morning at ten-thirty.

(Thereupon an adjournment was taken to 10:30 a. m. June 21, 1938.)

Monday, June 21, 1938.

Case continued.

Appearances as before.

THE COURT: Before we proceed with the argument, I compared the subpœnas over Sunday, and it seems to involve at least what I thought was some duplication, in the documents called for. Did you trouble to sort that out?

MR. MATTHEWS: I think that is right, Judge Clark, as I examine them too, and I thought maybe the other counsel might have gotten in touch with our opponents to take care of the duplication end. We are perfectly willing, if there are duplications,——

THE COURT: For instance, you asked several of the four people in several cases,—I think every one of them was asked about the Garland Fund.

MR. MATTHEWS: Yes.

THE COURT: Or to produce the Garland Fund.

MR. ROONEY: That was to cover the proper officer responsible for those records, your Honor, to be sure we had the proper officer responsible for them.

THE COURT: Well, did you make a list of the documents you wanted, the actual documents? Then perhaps we could find out who has got them, if anybody has.

MR. MATTHEWS: Will your Honor tell me what your Honor thinks are duplications? Maybe they will be the same that I think are duplications?

THE COURT: Well, the Garland Fund——

MR. MATTHEWS: Let me get that right now, Judge, and I will follow you.

MR. ERNST: Have you got copies of those?

MR. HERSHENSTEIN: I have just got this. You can use ours.

MR. ERNST: Oh, all right.

MR. HERSHENSTEIN: You can use ours.

MR. MATTHEWS: Which would be the one to produce the Garland Fund?

MR. ROONEY: Mr. Ernst, treasurer.

THE COURT: Let me read what I have got.

MR. MATTHEWS: Yes, your Honor.

THE COURT: I have made a sort of a tabulation of it. I have the Garland Fund, the American Civil Liberties Union——

MR. MATTHEWS: Yes.

THE COURT: Follow this closely, if you will. The Communist Young Workers League, the Political Prisoners—I don't know what that exactly was; I couldn't tell what that was from the subpœna.

MR. MATTHEWS: The International Committee on this subpœna for Political Prisoners——

THE COURT: That is the one.

MR. MATTHEWS: That is Mr. Garfield Hays.

THE COURT: The International Labor Defense, The Industrial Workers of the World, The New Masses, The Vanguard Press, the Federated Press——

MR. MATTHEWS: I haven't got that. Is that in Garfield Hays' subpœna?

THE COURT: No—these are from all of them.

MR. MATTHEWS: Oh, yes. I follow that.

THE COURT: I haven't got Mr. Hays'. Was he given a subpœna?

MR. MATTHEWS: No, apparently——

MR. ROONEY: Yes.

MR. MATTHEWS: Apparently, your Honor——

THE COURT: I haven't got that. I have four; one for Mr. Ernst, one for Mr. Carney, one for Mr. Baldwin, one to Dr. Ward. I have no fifth. Is there a fifth?

MR. ERNST: I had said, your Honor, that there was a fifth, that I didn't have it with me, but I was also representing Mr. Hays on it.

THE COURT: Have you got a copy?

MR. ERNST: I haven't got copies of any of them.

THE COURT: Well, has anyone got a copy?

MR. MATTHEWS: Is it all right to take it out?

MR. ROONEY: Yes.

MR. MATTHEWS: Here is one, Spaulding.

MR. ERNST: Which is this?

MR. MATTHEWS: Garfield Hays.

THE COURT: Have you got it? I want it.

MR. ROONEY: Give that to the Court. Mr. Ernst has it.

MR. MATTHEWS: I just gave it to Mr. Ernst.

THE COURT: Oh, I beg your pardon.

MR. ERNST: The Judge wants it.

THE COURT: No, no, I will let you look at it first.

MR. ERNST: I have seen it. (Handing to the Court.)

THE COURT: Now, there is nothing new on that one. I will go on: The Vanguard Press, the Federated Press, The Daily Worker, the CIO Affiliates. Now, those are all that I got off all the subpœnas. Is that all inclusive?

MR. MATTHEWS: Yes, your Honor, as I followed you, I think it is.

THE COURT: All right.

MR. ROONEY: And there is one for the reception of Soviet fliers. That was one I think you didn't mention, your Honor.

THE COURT: Oh, yes, I left that one out. This seemed a little limited; a study of obscenity and censure —the New Masses.

MR. MATTHEWS: That to my mind doesn't refer to any notes that an author may have.

THE COURT: What? The Soviet fliers—do you want me to add that?

MR. MATTHEWS: I don't know. Is that to be added?

MR. ROONEY: Yes.

MR. ERNST: Soviet fliers?

MR. MATTHEWS: I think that is what it is.

THE COURT: I thought it was a reception committee to the Soviet fliers.

MR. ROONEY: To the Soviet fliers.

THE COURT: All right. Now, before we even go to a consideration of them, I think we should first find out if any of the persons to whom the subpœnas are addressed have got any of the papers that they require. For instance, I never heard of the Federated Press, without saying that invidiously; I just never heard of it. I have heard of the Vanguard Press and——

MR. MATTHEWS: There is a long article on the Federated Press in the Fish Report, Judge Clark. May I remain seated?

THE COURT: I just simply say I never heard of it. That doesn't mean that it isn't well known. I have heard of the Vanguard Press, and I would suppose that the books, papers and records of the Vanguard Press are in the possession of whoever is the Vanguard Press, not of Mr. Ernst.

MR. ERNST: Your Honor, would you care to hear me on my general argument in regard to the subpœnas?

THE COURT: Well—of course I am going to hear you, Mr. Ernst, naturally, but I thought it seemed as a practical matter better to sort out the papers and see who has got them, if anybody.

MR. MATTHEWS: Do you want the Vanguard Press?

MR. ROONEY: Yes.

THE COURT: Well, your subpœna, Mr. Rooney, says all books, papers and records of the Vanguard Press. Why, the Vanguard Press, as a matter of common knowledge, is a large publishing house.

MR. MATTHEWS: I don't know where it is.

MR. ROONEY: I think that your Honor stated the salient situation there originally when you asked Mr. Ernst whether or not he had these records. I think Mr. Ernst does through that fund of which he is the treasurer.

THE COURT: Has the records of the Vanguard Press? You might just as well ask him if he has the records of Scribners, or Harpers, or Doubleday Doran. You don't think he has them, do you?

MR. ERNST: May I address your Honor on that point a moment? I happened to be counsel for Double-

day Doran and the Vanguard Press at times, and I have not represented the Vanguard Press for some years. I have been instrumental in having them publish the lives of the various judges of the Supreme Court and the dissenting opinions of Judges Holmes and Brandeis. That is the reason I knew who they were, because I happened to have those two books, and they have got Vanguard Press written on the bottom of them.

I was one of the large group of people that saw to it that that house was originally organized.

THE COURT: See if Justice Holmes' dissenting opinion isn't in my office. I think it is.

MR. MATTHEWS: I have that.

MR. ERNST: My point, your Honor, if you wish to hear me sooner or later is—my objection goes way beyond whether this material is in the possession of anybody——

THE COURT: Well, let's drop out of the subpœnas all that is improperly there on more technical grounds. Now do you suggest that w bring in the books, papers and the records of the Vanguard Press through Mr. Ernst, who has nothing to do with them?

MR. ROONEY: Mr. Ernst answered that he is one of the organizers of the Vanguard Press.

THE COURT: You don't seriously contend, Mr. Rooney, that a person acting in his legal capacity, organizing a corporation, is in possession of the records, do you?

MR. ROONEY: I will leave that to Mr. Matthews.

MR. MATTHEWS: I didn't draw the subpœnas, I only just learned—but I will take it on my own responsibility——

THE COURT: I gathered from Mr. Rooney that he did.

MR. MATTHEWS: Yes, sir. I will take it on my own responsibility that the Vanguard Press be removed from the subpœna and that the notes for a book be out of the subpœna.

THE COURT: How about the Federated Press?

MR. MATTHEWS: The Federated Press is mentioned in the Fish report. Now, I don't know whether Mr. Ernst is the person who has anything to do with it.

THE COURT: Have you the page in the Fish report where it is mentioned?

MR. MATTHEWS: I left my papers in the office. There isn't any question about the Federated Press, that Mr. Ernst cannot produce records from a concern he has nothing to do with.

THE COURT: Who is the man from the Federated Press?

MR. ROONEY: The Federated Press, sir, was sponsored by this Garland Fund.

MR. MATTHEWS: They made large contributions to it, as I remember it, according to the record—I will stand corrected if I am wrong, and it was a matter of much investigation at the time, but nevertheless I conceive the subpœna should be directed to the man who has charge of those records and if Mr. Ernst has not, then it cannot be directed to him.

THE COURT: Then the Federated Press is out as far as the subpœna is concerned.

MR. MATTHEWS: I wouldn't say it is out, I wouldn't want to take the responsibility, but that is my view of it now.

THE COURT: Can you advise us who the officers of the Federated Press are?

MR. MATTHEWS: Maybe Mr. Ernst can enlighten us.

MR. ERNST: I don't know in the first place and in the second place I wouldn't enlighten them. I do know a lot about the Federated Press. One of the witnesses here I think testified that the *Jersey Journal* or one of the Newark papers was subscriber to it.

THE COURT: No, that is the General Press, a press association that also, in my ignorance, I had never heard about.

MR. MATTHEWS: I made that mistake when I read the subpœna.

THE COURT: Anyway, you will have to find out who the officers of the Federated Press are.

MR. MATTHEWS: Suppose we hold that in abeyance.

THE COURT: The Vanguard Press is out, notes for a book is out, Federated Press is out as far as Mr. Ernst is concerned. Now, I should say that that also applied to the New Masses. That, as I understand it, is a publication of its own.

MR. MATTHEWS: No, I wouldn't say that because the ownership of the New Masses was laid in the lap of the Garland Fund or the American Fund for Public Service.

THE COURT: Correct, I mean it was laid in the lap but we cannot disregard the corporate fiction, can we?

MR. MATTHEWS: No, but you have the directorate there, some several people who are defendants in this case.

THE COURT: Mr. Ernst I understood was not a director of the New Masses, was he?

MR. MATTHEWS: No, no, as I recall——

THE COURT: Then we will put that in the same category as the Federated Press.

MR. MATTHEWS: No, no, please, your Honor, let us not do it in that fashion. If the New Masses is owned by the Garland Fund, then the records of the New Masses are mightily relevant and pertinent.

THE COURT: I didn't pass on that; I just said you had the wrong person subpœnaed.

MR. ROONEY: No, I don't think so because if the ownership is in the Garland Fund and the treasurer is subpœnaed to bring them, who else would be more fit?

THE COURT: I will tell you who else would be more fit, the president of the New Masses, whoever he may be.

MR. ROONEY: No, the treasurer would be just as fit.

MR. ERNST: The treasurer would be more fit, I should think.

THE COURT: Who is not Mr. Ernst.

MR. ROONEY: The treasurer of the Garland Fund who owns the New Masses.

THE COURT: I will not disregard the corporate fiction for the purposes of the subpœna, I don't think it is good law.

MR. ERNST: May I suggest, your Honor, that you might predicate your position on a sounder ground. Counsel for Frank Hague says that the Garland Fund owns the New Masses. It is not the fact and the truth, and anybody who so told him that lied to him and probably they got it from the "Red Network."

MR. ROONEY: Do you deny that in 1932——

MR. ERNST: I am not going to be examined by you, sir.

MR. ROONEY: Now, please. You just made a statement to the Court. Are you speaking as of 1932 or of the present? I think in fairness to the Court you should enlighten the Court.

THE COURT: If they don't own the New Masses then even disregarding the corporate fiction it would have no effect.

MR. MATTHEWS: The statement of Mr. Ernst on the record is that the Garland Fund does not own the New Masses and that he is not the treasurer of the New Masses, and therefore on that statement, which your Honor takes from him as an officer of the court and which I do, he cannot be asked to produce it.

THE COURT: I mean, Mr. Matthews, if you dispute any of these statements——

MR. MATTHEWS: I don't dispute them, your Honor. He is an officer of the court, he is making a statement to the Court.

THE COURT: All right. Now, that is the New Masses. How about the Daily Worker? That was on the subpœna of Mr. Ernst only.

MR. ERNST: Your Honor please, I would like to make a statement on that. I have never been in any way directly or indirectly connected with the Daily Worker except in two capacities; one is that about every two weeks they call me vituperative names because I preach against Communism, and in the other instance I had a relation with the Daily Worker because I was consulted by them as counsel when they were being outrageously ridden by public authorities and denied the rights of free press and those, sir, have been my only connections with the Daily Worker.

MR. MATTHEWS: Except you made out the checks for the Garland Fund which were given to the Daily Worker; that is a connection and that is why we want that.

THE COURT: Well, I am not passing on that now, Mr. Matthews. I am saying we have got to subpœna the people who have got the document before we can act. So the Daily Worker is out.

MR. MATTHEWS: The Daily Worker, your Honor means Mr. Ernst cannot produce those.

THE COURT: Only upon his subpœna as I went over it last night does that publication appear.

MR. MATTHEWS: Of course, the statement of Mr. Ernst that they call him vituperative names, etc., that would be interesting, whether it was before or after they contributed to the New Masses.

MR. ERNST: May I say at all times in the history of the Daily Worker from the time it started they have never ceased for any length of time riding me, ridiculing me, and castigating me in their columns because I am a believer in free speech and a free press, which is repugnant to the thesis of Communism.

MR. MATTHEWS: But if I am informed correctly, sir, you wanted to distribute that Daily Masses in Jersey City.

THE COURT: Don't mix them up and say Daily Masses and New Worker.

MR. ERNST: Your information is entirely incorrect.

THE COURT: It is *Daily Worker* and *New Masses*, not Daily Masses and New Worker.

MR. MATTHEWS: Well, I might be forgiven for mixing the names, but the proposition that interests me is that they should contribute all these thousands to a magazine that is castigating them.

THE COURT: Well, anyway, they have to be subpœnaed from someone else. Now, the Industrial Workers of the World, is that a corporation?

MR. MATTHEWS: You will have to ask the subpœna drafter; I don't know.

THE COURT: No, no, you came into the case after these subpœnas were made out. Don't think I am harassing you. Will someone answer that?

MR. ROONEY: I do not know, sir. The basis of that subpœna, of the subpœna addressed to Mr. Ernst, so that we understand each other, was because of the large contributions that were made by the Fund controlled by Mr. Ernst and his associates, the Garland Fund, to these various enterprises.

MR. ERNST: Your Honor please——

THE COURT: My recollection of that book you had was that there wasn't anything about the Industrial Workers of the World.

MR. ERNST: I can enlighten you on that. The I. W. W. was an active organization around the time of the last war.

THE COURT: We all remember that, commonly known as the Wobbles.

MR. ERNST: As far as I am informed, I have not heard of it during the past probably ten years; I have never been a member, I have never been a contributor.

THE COURT: Where is that book, Mr. Jaeckel?

MR. ERNST: May I add one thing? I have volunteered my services and I have voted moneys in support of members of the I. W. W. when they were being deported out of cities in the United States and when they were not being given a fair trial, as I thought they were entitled to a fair trial under the Constitution of the United States, and to have nothing missing in the record may I here say that if an I. W. W. comes to me and I think he has been deprived of his constitutional rights I will defend him

to the limit of my time and my finances without compensation, as I have in other cases.

THE COURT: Well, I didn't know there were any still left.

MR. ERNST: I think they are stil in existence, your Honor, but this fishing expedition thing of writing out names which must have come from a book which has been thoroughly repudiated, because obviously some clerk has copied lists of names of organizations from a book which lists the dangerous radicals of America and among them, of course, you will find Eleanor Roosevelt and others of her group——

MR. MATTHEWS: I think Mrs. Roosevelt should be spared that reference, and if it is a reference to her having been abused I join in condemning it, but if it is to lug her in for newspaper purposes, I think she should be left out.

THE COURT: Oh, I think so. There is a book called the Red Network.

MR. MATTHEWS: I don't know of it, your Honor.

THE COURT: Well, Mr. Rooney, will you tell us how anyone could produce the papers of the I. W. W., an unincorporated organization, so far as appears at least, without any present or current existence.

MR. ROONEY: Sir, if you supply the money——

THE COURT: That isn't the question I asked you, Mr. Rooney. I asked you how, and the only question we are now currently considering is how anyone can produce their records.

MR. ROONEY: There is no proof before the Court that that organization is out of existence, sir.

THE COURT: Well, will you supply the proof as to who the officers are? Mr. Ernst is not one of them and the subpœna is addressed to him.

MR. ROONEY: If Mr. Ernst states that he cannot produce those records, that, as far as I see it, is the end of it in so far as he is concerned, but it seems to me that this organization which is contributing funds must have some record of the organizations to which they contribute.

THE COURT: Well, I suppose, Mr. Rooney, I don't suppose it is relevant, but you and I contribute funds to certain charities and we don't have their records.

MR. ROONEY: Well, apparently Mr. Ernst says he has nothing to do with them.

THE COURT: That's out. I am going backwards on my list. The International Labor Defense, as I understood it, was an organization with numerous officers, in fact the public papers reported that a former Congressman, I forget his name, Marcantonio, something like that, was the president; is that right?

MR. ROONEY: That's right, he is the present president of it.

THE COURT: I think the subpœna should be addressed to him.

MR. MATTHEWS: Marcantonio, a Congressman from New York.

THE COURT: A former Congressman.

MR. ROONEY: But your Honor, isn't this ruling all predicated on the assumption that none of the records are in the control of Mr. Ernst?

THE COURT: I will ask him. I should assume they were in the control of their proper officers, I don't know.

MR. ERNST: Your Honor please, I would like to say a word about the whole form of this subpœna. It seems to me that under the cases, and I will give you

the citations, they are void in toto, in the first place being too general and what old Judge Holmes originally described as a fishing expedition; in the second place there is no statement indicating which of the records would be in any way material; and in the third place I fail to find a single defense interposed by the defendants to which any of this material can go. Now, if your Honor would bear with me a moment——

MR. MATTHEWS: May I interrupt you a minute?

MR. ERNST: No, if you will let me finish on the argument.

MR. MATTHEWS: Well, it will save you arguing.

MR. ERNST: No, may I just finish, please? Assume for the sake of argument that I am the head of the I. W. W., which I never belonged to; assume I have all their records; assume I financed the organization in toto; is that a defense to our claim of deportation? Is it a possible defense to what we claim are illegal searches and seizures? Is it a possible defense to interference with organizational activities? Is it a possible defense what is in a person's mind without overt act, to the denial of free speech? It seems to me that is the fundamental issue, your Honor, in the situation. How could it possibly be held in these United States under a democracy that what is in a man's mind in respect of I. W. W. or anarchy or any of these things can possibly be interposed as a defense?

THE COURT: Well, without expressing any present opinion about it, Mr. Ernst, the only relevancy I would say that the evidence called for by the subpœna might have to the issue would be first the question of whether the state of mind of the populace of Jersey City has been correctly represented with respect to the public meetings, and then secondly whether, if it could be shown that some of these organizations advocated the

overthrow of the Government by violence, whether that would have any bearing on the equitable position of the plaintiffs. You understand that in saying that I express absolutely no opinion on it, first whether it could be proved, and secondly, whether in the last analysis that legal position is sound.

MR. ERNST: If your Honor please, I think we do not clarify the issue to the American public by such an explanation, much as it would be valuable to a senatorial commission. I do not see how the state of mind of the people of Jersey City can be deemed to be a factor in the legal determination. We have had testimony from Mr. Casey of what he thought the state of mind was. Whether or not he properly interpreted that state of mind or not and sized it up and appraised it properly it seems to me is not the issue; and, moreover, as to the denial of the specific permits, the testimony, as I recall it, is that Mr. Casey made no inquiries, that he was not concerned with the backgrounds of the speakers and their connections. He relied on a very different theory, and that is he relied on a theory that there might be a disturbance. Now whether or not the people of Jersey City thought there was a disturbance because of the Red Network or some literature that was handed out, such as was introduced here, or whether they found their state of mind disturbed for any reason, it seems to me it is entirely immaterial, unless we, as a matter of law, in America, are going to take the position that whenever the Mayor of a city, or a Superintendent of Public Works, believes that the community has a disturbed state of mind, he has the right to deny people these basic rights under the bill of rights.

THE COURT: No, I don't think I quite said that. I said whether the people had it. I don't think his belief, perhaps, may be so material, unless it is a reasonable belief.

MR. ERNST: Do I understand your point is that this might be material to prove that the people in Jersey City had a state of mind?

THE COURT: Might be, I said.

MR. ERNST: What?

THE COURT: Might be, I said.

MR. ERNST: Might be; assuming that this material was available to them, number one; and it seems to me if you work on the theory of the state of mind, it makes no difference whether the people of Jersey City had a valid basis for a state of mind or an invalid one, because the Chief of Police on his theory, and the Mayor, if they find things objectionable to the people of the city, clamp down on free speech and the bill of rights—

THE COURT: Well——

MR. ERNST: Now, whether the people of the city had some facts before them or some rumors, maybe they were as misinformed as to the relationships as the people who wrote the subpœnas were.

THE COURT: I won't say that I have made up my own mind about it, because I haven't, and it may be it wouldn't even be proper for me to have made up my mind; but as far as public meetings are concerned, it might be the law, or it should be the law, rather, that if the persons who live in the city object to the views, and really object, I mean without fomentation or anything of that character, from what the speakers either have in the past expressed or say that they are about to express, the authorities need not permit those views to be expressed on the public streets or the public parks. That might be the law. I don't want to say now whether it is or not; I mean the law in the last analysis.

MR. ERNST: Now, on that, your Honor, the only evidence that would seem to me to be material would

be whether the particular speakers who applied for permits had ever made speeches that caused a disturbance, or had ever preached the overthrow of the government by force and violence. I am not conceding for a moment the legal position——

THE COURT: Oh, no.

MR. ERNST: ——that a man who had so preached is banned, because I will stand by Judge Holmes on that position; but the testimony is that they never looked into the fact as to whether there had ever been a disturbance from their speaking. Plus that I add this fact, that there is no defense that has been pleaded, and I do not intend to plead surprise, not by a long shot, but I ask the counsel for the defendants to show me the defense in their pleading which might be construed to mean that if the head of the I. W. W. came in here tomorrow, thereby he could be deported, searched unreasonably, not allowed to picket peacefully, and be denied in advance of disturbance the right to speak in halls or public places. Show me the part of the pleading under which any of this can come in.

MR. MATTHEWS: I have advised the counsel who drew the papers that the pleadings should be amended to add affirmative defenses in that respect.

MR. HAMILL: If your Honor please, Judge Glavin who is not here today, drew those pleadings from such information as he had at the time, and they do not cover all of the defenses in their full scope which we wish to present; and in order to enable us to put in those defenses, we shall ask for an amendment of the answer to that extent.

THE COURT: Well, it seems to me you ought to submit the amendment to your opponents and give them notice.

MR. ERNST: If your Honor please, we don't want to delay the trial at all. As soon as it is submitted, we

are not going to plead surprise. May we merely, to save time, Mr. Hamill having indicated that some of these defenses are going to be interposed, ask that the particular things, because we are bound to raise it, be given on this point. What are the defenses which were within the knowledge of Frank Hague and his associates at the time of the denials? In other words, if they denied the Congressmen and other people the right to speak, the defenses then should have been in existence in their minds. And I say to you, with all honesty, as I read the record, none of the plaintiffs can honestly sign those amended defenses.

MR. MATTHEWS: I object——

MR. ERNST: At this time.

MR. MATTHEWS: I object to those statements.

MR. ERNST: That is an argument. You can't object to statements. You can argue against them.

MR. MATTHEWS: Statements are not argument.

MR. ERNST: You can argue against them.

MR. MATTHEWS: I object to that statement because it is made by this gentleman. The fact is that I, as the trial counsel, come into the possession of pleadings that, when I examine from the standpoint of defenses, do not sati y me. I suggest in all fairness that they be amended to cover that situation. But these documents would be admissible if there were no affirmative defenses. These documents would be admissible under the denial in the pleadings. But in order that your Honor might have a scope for the defense, I suggested to them only this morning, in fact they were being written up in my office in long hand, a proposed amendment. Now, I submit that the statement here that none of these records of the Garland Fund, or the Civil Liberties Union, are relevant to this issue——

THE COURT: Well, we haven't got to that yet, Mr. Matthews.

MR. MATTHEWS: Well, he is arguing on the general admissibility of anything that has been asked for.

THE COURT: We now struck out—I understood that, but I was proceeding slowly to strike out the requests for all the funds up to—I had reached the Political Prisoners, whatever that is. Here it is; International Committee for Political Prisoners. I was going to insist on continuing along those lines temporarily. What is the International Committee for Political Prisoners? This is a subpœna addressed to Mr. Ernst.

MR. MATTHEWS: Well, when a man hasn't the records, he can't produce them, of course.

THE COURT: Oh, no, but I thought maybe we could help get them if anybody knew what they were. I never heard of this.

MR. MATTHEWS: I have told them already to get the man that has them. If Mr. Ernst says he hasn't them, that is out.

THE COURT: Have you got those, Mr. Ernst?

MR. ERNST: I haven't got those, your Honor, but it seems to me that this is not the proper way to draw up a good subpœna for the defendants, to draw them up on a fishing expedition and then ask, "Have you got them?" I rather think that is something less than decent, to subpœna from a member of the bar, without full inquiry, records that you must have known he didn't have—probably to create an inference that he had them. And I resent that kind of practice, as a member of the bar.

THE COURT: If the inference is incorrect,——

MR. MATTHEWS: If Mr. Rooney, in drawing the subpœna, drew that conclusion, he probably drew it from your affiliation with organizations which you admit, sir.

MR. ERNST: He could have made an inquiry.

MR. ROONEY: If your Honor please——

MR. ERNST: Is Mr. Rooney a member of the bar?

THE COURT: Yes, he is.

MR. ERNST: Is his appearance recorded here?

THE COURT: No, it isn't.

MR. ERNST: I would like to have it recorded.

MR. ROONEY: I have been a member of the bar for 20 years.

MR. ERNST: I mean in this case.

MR. ROONEY: You asked if I am a member of the bar. I have been a member of the bar for 20 years.

MR. ERNST: I ask that his name be included as of counsel in this case.

THE COURT: All right.

MR. ERNST: Can that be done, your Honor?

THE COURT: Yes, certainly.

MR. ROONEY: Now, if your Honor please, in connection with this statement of Mr. Ernst, it seems rather a strange procedure that these matters should be argued orally without formal motion papers before the Court.

THE COURT: Well, I don't know whether you were here, Mr. Rooney, the other day, but we went into that in some detail.

MR. ERNST: They made the motion——

THE COURT: It was agreed that this was the form that the motion would take. It was agreed.

MR. ERNST: They made the motion, and we ask to quash.

THE COURT: Yes.

MR. ERNST: These subpœnas are a motion under the Fourth Amendment to the Constitution. That is what they really are.

MR. ROONEY: Now, if your Honor please, we issued those subpœnas through the clerk of this Court. Counsel has a perfect right to issue a subpœna duces tecum. The method of procedure, as I understand it, and I think your Honor will bear me out, is that they must object to the method of procedure.

THE COURT: They make the ordinary motion.

MR. ROONEY: They must do so by some formal motion.

THE COURT: They made it on the record, Mr. Rooney, several days ago.

MR. MATTHEWS: We consented to argue it, Mr. Rooney.

MR. ROONEY: All right.

THE COURT: Now, the International Fund or Committee for Political Prisoners, that's out. Now, Communist Young Workers League; what's that?

MR. ROONEY: All of these leagues, sir, are organizations which were contributed to by Mr. Ernst and of which he and his associates are members of the Board of Directors.

THE COURT: Mr. Ernst, are you a director of the Communist Young Workers League?

MR. ERNST: Am I what, sir?

THE COURT: A director or a member?

MR. ERNST: By no means.

THE COURT: It is incorporated?

MR. ROONEY: He or his associates, it asks.

THE COURT: Well, you can't address a subpœna, Mr. Rooney, I need hardly tell you, to a person and say because your associates are connected with it, you must produce the document.

MR. ROONEY: I understand Mr. Ernst states he has none of those records.

THE COURT: Yes, so I understand. Now, that leaves the American Civil Liberties Union; I think the subpœna of Dr. Ward is the appropriate place for that, isn't it? Isn't he the president of it?

MR. ROONEY: He is the president of it but we want to obviate the necessity of having Dr. Ward walk into Court on the return day and say he doesn't have the records.

MR. MATTHEWS: I think Dr. Ward said he promised to bring the records, didn't he?

MR. ERNST: If your Honor please, if the Court finds that the records on a properly served subpœna should be produced, and does not quash the entire subpœna, the Civil Liberties Union will produce every inch of its records. No question about that.

MR. MATTHEWS: That's that.

MR. ERNST: But I want to argue—no, that isn't that yet; what we want to argue is whether there shall be even that subpœna duces tecum. That is the important thing to argue.

MR. MATTHEWS: In other words, you can have them but you can't.

MR. ERNST: Oh, no, I am just saying that we are in a position to produce and will if the Court sustains this kind of a subpœna for this purpose.

MR. MATTHEWS: There isn't any question Judge Clark will order those records produced, I think.

THE COURT: And then, the Garland Fund. Now, you will have to state what you mean by the records, Mr. Rooney. What do you mean by the records? What records do you want from the two remaining organizations on Mr. Ernst's subpœna? I am leaving out the CIO, because that more properly should be put under Mr. Carney's subpœna.

MR. MATTHEWS: That's Carney's subpœna.

THE COURT: Yes.

MR. ROONEY: Do I understand then that your Honor has ruled on that or is your Honor asking me a question about it?

MR. MATTHEWS: He asked you as to the records.

THE COURT: I asked you a question about it.

MR. ROONEY: As to the records of the Garland Fund, of course we want their records. Mr. Ernst is the treasurer of the Garland Fund and was at the inception of it, and, incidentally, was one of the organizers of it.

MR. ERNST: Which is not true, your Honor.

MR. ROONEY: That is true, and you know it.

MR. ERNST: It is not true.

THE COURT: Well, don't pass the lie, please.

MR. ERNST: It just isn't true. I was added to the Board later.

MR. MATTHEWS: Well, what is sauce for one is sauce for the other.

THE COURT: I should imagine Mr. Ernst must know what he organized.

MR. ROONEY: Well, apparently he doesn't, because he issued statements right after the organization of it, which we can prove.

THE COURT: Well that doesn't mean anything.

MR. ERNST: Newspaper statements.

MR. ROONEY: Now, if your Honor please, in connection with that, we are entitled to know what these amounts were, received by that organization, the Garland Fund, which after all, as was charged on the witness stand in this case, is the heart of these proceedings, the source from which they were received, the dates they were received and the amounts disbursed by them, the places to which they were disbursed, and the dates on which they were disbursed.

THE COURT: I thought you had all that in that little library book we had the other day.

MR. MATTHEWS: No, you haven't got the dates yet. You have just got the fact.

THE COURT: You have taken the book away. Otherwise I would be better informed as to that.

MR. MATTHEWS: You may have it. I will see that it is sent to your office this afternoon.

THE COURT: Oh, no. But I say—you were going to have it photostated, Mr. Matthews, weren't you?

MR. MATTHEWS: Not that.

MR. ERNST: If your Honor please, the Garland Fund reports have been printed and distributed, I think, in several thousand copies, either every six months, year or year and half, and you will probably find them in every sizable library in the United States, printed.

THE COURT: Printed?

MR. ERNST: Showing amounts, contributions, including the Sacco-Vanzetti case support, the Scopes case, Workers' Education and other objectives.

THE COURT: Does it show the receipts?

MR. ERNST: Oh, it shows everything.

THE COURT: The source of the receipts?

MR. ROONEY: Now, if your Honor please, so I may get myself straight, may I ask Mr. Ernst through the Court as to whether or not he or his firm incorporated the American Fund for Public Service?

THE COURT: That is the Garland Fund.

MR. ERNST: I don't hesitate to say that our office incorporated that organization.

MR. ROONEY: And were you the gentleman who directed the preparation of the papers?

MR. ERNST: What papers are you talking about?

MR. ROONEY: The certificate of incorporation.

MR. ERNST: I don't recall that, but I will assume full responsibility.

MR. ROONEY: And were you the first treasurer of the organization?

MR. ERNST: I don't know. I know I was not on the initial board; but I have been a proud member of that organization which in my opinion did more to put through the Child Labor Amendment than anything in the United States except one organization.

MR. MATTHEWS: Well, we can't help his pride, because at times Satan uses good purposes and gets an end in order that the ultimate may be destroyed.

THE COURT: Well now isn't it a fact that there are official reports of the Garland Fund already in evidence?

MR. ROONEY: How can there possibly be any objection from the treasurer of this organization to producing the reports?

THE COURT: I don't even know that there is any objection yet. I haven't even asked that.

MR. ERNST: There is, sir, a very real objection, if your Honor will hear me on the basis of the objection.

THE COURT: Yes, sir.

MR. ERNST: Not only to the Garland Fund but all this stuff. My objection is this, that those subpœnas were issued as a fishing expedition, and the admission is now made in Court that a good bit of the material should not have been subpœnaed from the people to whom the subpœnas were directed.

THE COURT: Well, we are down now to two. There are only two left.

MR. ERNST: That's right; but it shows this, your Honor: it shows that there was not placed before this Court as a basis for the issuance of subpœnas any facts indicating what material in there was material, how it could be material, and under what defense or part of the pleading it could be material; and I recognize, as Mr. Matthews has stated, that they intend to amend their pleadings, but nevertheless I ask that any one of the array of counsel for the defendants point to a single clause in their present pleadings, and the subpœnas were issued under the present pleadings, a single clause that would permit this material to come into court.

MR. MATTHEWS: The denial——

MR. ERNST: For example—just let me finish.

MR. MATTHEWS: No, you have asked for a point or two.

MR. ERNST: Will you kindly let me finish?

MR. MATTHEWS: The denial of the allegations of the petition is sufficient to predicate the subpœnas on. Let the record show that.

MR. ERNST: If your Honor please, may I say this? We just get no where if we all talk at once. May I say this, your Honor? We have issued two subpœnas in this case. We issued a subpœna in relation to the material for permits. We were specific. It related to the pleadings and was well within the provisions of the Hinkle case, as to subpœnas being definite, not vague, and being material. This, your Honor, is as if we subpœnaed from Frank Hague all of his correspondence with, may I say, the bookies——

MR. MATTHEWS: I object to that statement.

MR. ERNST: All——

MR. MATTHEWS: Just a minute. I object to that statement.

MR. ERNST: I am going to say——

MR. MATTHEWS: Just a minute. I ask your Honor not to sit there and hear that slander of the Mayor of a city comtemptively hurled at the court in this case, in a cowardly manner, because he knows he is not responsible for damages in a suit for slander for it. That's a cowardly, contemptive statement against the Mayor.

THE COURT: I thought the counsel was responsible in court.

MR. MATTHEWS: I don't think so, under the law. That's cowardly and contemptible.

MR. ERNST: I am responsible, your Honor.

MR. MATTHEWS: That is cowardly and contemptible, to do that.

THE COURT: Mr. Matthews, I thought the Judge was the only person who could plead absolute privilege.

MR. MATTHEWS: Judge Clark, let us not lose sight of the fact——

THE COURT: There is some doubt even about that, isn't there?

MR. MATTHEWS: Let us not lost sight of the fact that this man has just into your ears called the Mayor one who has charge of the bookies in Jersey City. That's cowardly.

MR. ERNST: If your Honor please, I will give you another example. What if we subpœnaed tomorrow all of the correspondence between Casey and the Mayor in respect to this entire subject, plus their bank accounts? Because there we are right with a foot in the door, because the Mayor said he contributed; and we could come here and say we want his entire bank accounts, because we want to find out whether when he said a few hundred dollars, that's all. Now, obviously, that would be an abuse of the subpœna power, and we have something to pin it on. And so I come back to this——

THE COURT: Well, now, I want to interrupt again, just for one point, so that the argument is clear. There are two other organizations of Mr. Baldwin's subpœna that haven't appeared on the others: The League for Industrial Democracy—what is that?

MR. MATTHEWS: If there are any organizations, Judge Clark, might I not have——

THE COURT: I just wanted to know what it was.

MR. MATTHEWS: Might I not have the courtesy of the court to this extent: if there are any records that this officer of the court says he has control of——

THE COURT: Mr. Baldwin isn't here.

MR. MATTHEWS: Oh, Baldwin?

THE COURT: Baldwin. I am finished with Mr. Ernst, as far as he actually has any records. Now, I am just skipping over to the next one, because I have made this table of various——

MR. MATTHEWS: The defendants would like to think, your Honor, that your Honor will co-operate with us to get that information which is relevant to defend this case, and we have a firm trust that you will, without further speeches and abuse of a man in his absence,——

THE COURT: What is the League for Industrial Democracy?

MR. MATTHEWS: I don't know.

THE COURT: Do you know?

MR. MATTHEWS: I didn't issue the subpœna.

THE COURT: No, I am asking Mr. Rooney.

MR. ROONEY: The League for Industrial Democracy is a league which was formed and is controlled by Mr. Ernst or his associates.

THE COURT: Well, who is the president of it? You have made that assertion.

MR. ROONEY: Norman Thomas; Norman Thomas.

THE COURT: All right. Then that subpœna should go to him.

MR. ERNST: Your Honor, I would just like——

THE COURT: Is he the president?

MR. ERNST: I don't know. I don't believe he is. But just let me make this clear; this accusation that Mr. Ernst controls the League, I would like this member of the bar to put into an affidavit, the source of that information, on which he can get the warrant, get the

subpœna. That's what I resent; that they won't give you facts——

MR. MATTHEWS: May we stop——

MR. ERNST: There is nothing to it.

MR. MATTHEWS: This gentleman from New York! No affidavit from him as he slanders the Mayor of the city, none whatsoever; but affidavits from a lawyer when he makes a statement upon information and belief!

THE COURT: All right. Mr. Thomas is the president.

MR. ERNST: I would like to know the source of his information, under the cases.

MR. ROONEY: I will tell you.

THE COURT: Just a minute. Norman Thomas is president of the League for Industrial Democracy. Now, the Communist Party—what do you mean by that? The Communist Party nationally, or as a state or what?

MR. ROONEY: Nationally.

THE COURT: Nationally?

MR. ROONEY: Yes, sir.

THE COURT: Well, would it be proper to say that generally speaking everyone knows that the candidate for President on the Communist Ticket was one Browder.

MR. ROONEY: I appreciate that, sir.

THE COURT: I don't know this organization. I don't know how you would subpœna their records. I don't know who are the heads of it. If you subpœnaed the Republican Party records, let us say, you would naturally subpœna John D. M. Hamilton, I suppose.

MR. MATTHEWS: Or the Honorable Jim Farley.

THE COURT: I mean, Mr. Rooney, I don't know. I am not trying to be humorous.

MR. ROONEY: No, but the only thing we are entitled to is a statement from Mr. Ernst that he has none of those records in view of the decisions.

MR. ERNST: This isn't to Mr. Ernst. May I ask that you stop this?

THE COURT: This is Mr. Baldwin. I skipped to him.

MR. ROONEY: Mr. Ernst, please stop the stage play.

MR. ERNST: Well, will you stop dragging my name in when you know we are talking about Mr. Baldwin?

MR. ROONEY: I didn't drag your name in. You did that yourself, 20 years ago, in this whole Red movement.

THE COURT: I suppose that the Communist Party, like every other political party in the United States, has a chairman. I don't happen to know who he is. Now, who is the chairman?

MR. ROONEY: I don't know.

THE COURT: I mean it is not anybody on these subpœnas.

MR. ERNST: I don't know who it is, your Honor.

THE COURT: So that's out.

MR. MATTHEWS: Maybe it is Stalin. Who knows?

THE COURT: Now then with the exception of the CIO subpœna, which I will come to in a minute, we are left now with the American Civil Liberties Union and the Garland Fund records. Again I say that I understood that the Garland Fund records were already in evidence.

MR. MATTHEWS: What they want on the subpœna, to be specific, to be very frank with you—there is no criticism; I suppose these subpœnas were gotten up in a hurry—the Garland Fund subpœna should particularize the particular checks, contributions and correspondence of contributions to those subversive movements which the witnesses have already testified influenced them and the people of Jersey City, by reason of the fact they appeared in newspapers, not to allow these fellows, who are members of these subversive groups, to come into the city.

Now, I am perfectly frank as a lawyer in saying that I think the subpœna should be definite as to the particular document wanted from the Garland Fund. I don't think the subpœna should be quashed, however. I think the subpœna ought to be amended to that effect, or if they would like a brand new one, accept service of it, we will serve it ourselves. Mr. Rooney hands me a note and says——

THE COURT: The subpœna as to the Garland Fund is withdrawn?

MR. MATTHEWS: Oh, no.

MR. ROONEY: Oh, no, no.

THE COURT: Not withdrawn?

MR. MATTHEWS: Oh, no, not withdrawn. We want you to rule on everything.

THE COURT: Well, you can't amend a subpœna, can you? Can you amend a subpœna?

MR. MATTHEWS: Yes.

THE COURT: I thought you couldn't, legally.

MR. MATTHEWS: If they will consent, we can.

MR. ERNST: No, if your Honor please, we will not consent. I think the thing to do is to draw up a new subpœna for each one of these people, and then it seems

to me that the only proper way to proceed, in view of the fact that their information on which they based these subpœnas was obviously so scant, they ought to state to the court the basis for thinking that the material to be subpœnaed will be material.

I have yet to hear the defense under the present pleadings where it may be material. There is not a single word, your Honor in the present pleadings under which it could get in, the Garland Fund, the I. W. W., the Communist Party, the Democratic Party——

MR. MATTHEWS: If the court is going to deny it, that is the court's business. We don't consent to it, and we vigorously oppose the Court's denying the production of the records under the subpœnas.

THE COURT: Well, we have found out, Mr. Matthews, that all of the requests of Mr. Ernst, except the Garland Fund and the American Civil Liberties Union, should have been directed to other persons.

MR. MATTHEWS: We found it out because Mr. Ernst has told the Court this morning that he is not connected with any of those organizations. I suppose the information of the scrivener of the subpœna was that he was.

THE COURT: Well, I am not passing any personal comments.

MR. MATTHEWS: I know, but as I listened to you I feared that you thought we just took it out of thin air.

THE COURT: It isn't my business to make any accusation, Mr. Matthews.

MR. MATTHEWS: No, I know that; I know you don't, either; it is neither your business nor your habit. But I don't want to leave that in your Honor's mind. My thought is this, your Honor, that since Mr. Ernst as an officer of the court, represents to the court that he hasn't got the records and has no connection with the institutions as an officer, then, of course, the subpœnas

can't stand for those. On the Garland Fund, the Civil Liberties Union and the CIO, we await your ruling with a great deal of interest.

THE COURT: Well, we haven't reached the CIO. As to the Garland Fund and the American Civil Liberties Union, you correctly, it seems to me, say that the subpœna will have to be more specific.

MR. MATTHEWS: Not as to the Civil Liberties Union, only as to the Garland Fund.

THE COURT: Let me see what is asked for in the Civil Liberties Union.

MR. MATTHEWS: All the records.

MR. ERNST: Your Honor please——

MR. MATTHEWS: Now, won't you let the Court please look at the subpœna?

MR. ERNST: Wouldn't it be the orderly procedure to have a petition prepared, as is the usual case. These subpœnas duces tecum under the practice are issued on a petition where any question is raised. As soon as they try to formulate into a petition what they want, then you will get to something we can really argue.

Now, may I say for the American Civil Liberties Union, we have hundreds of cases, hundreds literally every year. Will we bring all that in? Obviously, it is not material; obviously under all the cases no such subpœna can stand up, it must be specific.

MR. MATTHEWS: We stand on the subpœna as is of the Civil Liberties Union.

MR. ERNST: I move to quash as is; that is the issue.

THE COURT: What does it say in the Civil Liberties Union subpœna?

MR. MATTHEWS: I cannot hear your Honor.

THE COURT: I beg your pardon, my voice sank. That was my fault.

Now, it says here, I have got it, "Any books, papers or records in your possession or under your control of the American Civil Liberties Union." Now, obviously, Mr. Matthews, that is too broad as written.

MR. ERNST: If Mr. Matthews will stand on that we will stand on it.

MR. MATTHEWS: I will stand on that.

THE COURT: You don't seriously contend, or do you—I will put it the other way—do you seriously contend that a subpœna in that language is valid?

MR. MATTHEWS: Yes, your Honor, and I am sure your Honor will find everything that they have done, that they have produced under that subpœna, very material to this issue.

THE COURT: "Any books, papers or records in your possession or under your control." How long has the Civil Liberties Union been in existence?

MR. ERNST: At least, I should imagine, twenty years, and offices throughout the United States during the last decade.

MR. MATTHEWS: We stand on the Civil Liberties subpœna as is.

THE COURT: Well, I will have to call for petitions and then I will have to call for authorities on that point.

MR. MATTHEWS: I cannot hear you.

THE COURT: And then I will have to call for autorities on that point and if necessary take testimony.

MR. MATTHEWS: I abide your ruling today on the Civil Liberties Union, the Garland Fund and the CIO.

THE COURT: I don't remember mentioning the CIO. I thought—let's get it straight—I thought you had agreed, Mr. Matthews, that the Garland Fund, which is in exactly the same language as the American Civil

Liberties Union, should be amended and made more specific.

MR. MATTHEWS: Yes, but they refused to amend so I stand on it as is.

MR. ERNST: That is agreeable to us, we don't amend. We say that on that subpœna in relation to CIO, Civil Liberties Union and Garland Fund, as I understand it, as a result of the exploration by your Honor, that is what is left, we are perfectly content to stand on that as it is without a petition, without a statement as to materiality. We come frankly, as I see it, within a long line of cases. Now, if Mr. Matthews and counsel for the defendants are ready to stand on it also, it seems to me that that is the issue which should be briefed and presented. I have an outline of a brief here today and can get the brief to you by tomorrow.

MR. MATTHEWS: I can get you no brief by tomorrow, Judge, in fact I don't know how much longer today I can remain out of my bed.

THE COURT: Now, let's take up the CIO.

MR. MATTHEWS: I stand on that subpœna as is.

THE COURT: Let's take it up, shall we?

MR. ERNST: May I have the subpœna read? I haven't got a copy of it here.

THE COURT: I want to inquire if—that is directed to Mr. Carney.

MR. MATTHEWS: Yes, it is, your Honor.

THE COURT: Yes, it is, and I want to inquire whether he has in his possession any records of the Steel Workers Organizing Committee of the Committee for Industrial Organization, the United Electrical Radio and Machine Workers of America and the United Rubber Workers of America.

MR. MATTHEWS: In New Jersey.

THE COURT: It doesn't say in New Jersey but I will be glad to have it answered.

MR. MATTHEWS: Well, in the State of New Jersey, including all the minutes. I take it that that is what the subpœna means. Just a minute, did you mean New Jersey?

MR. HERSHENSTEIN: Yes.

THE COURT: With that addition will you inquire of Mr. Carney if he has any of the records.

MR. ERNST: Your Honor please, I think I am going to object unless you insist that I not do it, to having an informal discussion with inquiries addressed to us, when as a matter of practice the form should be that the defendant should present a petition to the Court stating on what grounds they believe that the information is in the possession of the person to be subpœnaed and whether or not it would be material, and in respect to what portion of the complaint or the answer it would be relevant.

THE COURT: Well, I have agreed to that, but I thought it was really less futile to find out first, which we seem to have done with some success, whether the person——

MR. ERNST: May I say that I am unable to state because as I read that subpœna it is different than what Mr. Matthews, as I understood it, asked his associate counsel as to the meaning. I don't yet know what it means. I don't believe that anybody can definitely say what that subpœna calls for.

THE COURT: Well, has Carney got the records?

MR. ERNST: Of what?

THE COURT: Of the Steel Workers Organizing Committee in New Jersey, we will add; the United Electrical Radio and Machine Workers of America in New

Jersey, and the United Rubber Workers of America in New Jersey.

MR. MATTHEWS: Have you got the correspondence between Mr. Ernst and himself, for instance?

MR. ERNST: He hasn't got those records, he hasn't those records, your Honor.

MR. MATTHEWS: Then we may produce, I take it, evidence if he hasn't got them that will be secondary.

THE COURT: I am not advising you about that.

MR. ROONEY: Now, if your Honor will just take a look at that very first paragraph of the bill of complaint you will see that they say that this Committee for Industrial Organization is an organization which has for its main purpose the organizing of unorganized strikers of affiliated unions, etc. They certainly must have some records if they are affiliates.

THE COURT: It does not follow.

MR. ERNST: May I say Mayor Hague is an affiliate of the National Democratic Committee. I take it we couldn't ask him for the records of the National Democratic Committee. He is more than an affiliate; he is vice-chairman.

MR. ROONEY: That is an entirely different situation. We are addressing this subpœna to the head of this organization in the State of New Jersey, which is the fountainhead of these various organizations.

THE COURT: He says he hasn't got the records. If you think he has, punish him for contempt.

MR. MATTHEWS: Well, your Honor, he says he hasn't got the records—he is not an officer of this Court.

THE COURT: I should say he said through his counsel.

MR. ERNST: Your Honor please, there may be people in the State of New Jersey who have those

records; they may find them. They couldn't, on a petition to the Court, have gotten any subpœna like this because they would have had to allege that on some kind of information Carney has them and nobody could have told them that Carney has those records.

MR. MATTHEWS: I don't believe, Judge Clark, that a more truthful expression of the truth of our defense could be had than the attitude of this counsel this morning in trying to foreclose all these records.

THE COURT: Well, I not only wish, Mr. Matthews, I must insist that you cease these personalities.

MR. MATTHEWS: Well, you didn't insist on keeping out the personality that he indulged in concerning the Mayor of Jersey City when I asked you to, sir.

THE COURT: I at least try, Mr. Matthews, to treat each side alike, and I insist on personalities being excluded.

MR. MATTHEWS: There is nothing personal in say- that this morning this man is opposing the introduction of every bit of evidence that the defense wants to produce. We will stand on your Honor's ruling on the Garland Fund, the CIO and the Civil Liberties Union— I say we will stand on it, we await it, sir.

MR. ERNST: Your Honor please, we are not oppos- the introduction of any of this. We merely ask that a petition be drawn up to the persons who have the control of the documents and not the people who have nothing to do with the documents. In the second place, at the proper time, we would like to argue the materiality of the evidence even if the proper parties are named.

MR. MATTHEWS: We don't intend to have him tell us what to do; we want you, your Honor.

THE COURT: I shall have to ask, Mr. Matthews—we have discovered, I think it is fair to say, that with the

exception of the Garland Fund, the Civil Liberties Union and the Regional office of the CIO, not including its affiliates, the wrong persons have been named in the subpœna duces tecum. As to those three it seems to be agreed that the right persons have been named. But it is asserted that there are legal objections to the evidence called for in the subpœna. I think that should be put in proper legal form and then I will rule on it, and if I rule against you you may have your appeal; if I rule in your favor the other side may have its appeal.

MR. MATTHEWS: Thank you. Judge Clark, please, Mr. Hamill has the wrong notion, that you denied subpœna to these people. You didn't. All you said is the wrong people have been named in the subpœna.

THE COURT: Yes, I made no ruling on that.

MR. HAMILL: Isn't your Honor's ruling that the subpœna cannot go to Mr. Ernst?

THE COURT: That's right, I made no ruling on the point.

MR. ERNST: I thought, your Honor, you reserved judgment or even haven't heard argument as to whether if the proper parties are subpœnaed, the material should be brought into court.

MR. MATTHEWS: In other words, your Honor, Mr. Ernst wants you to rule, it seems to me, by that request that no evidence shall be brought into court from these specific organizations.

THE COURT: I insist upon a petition accompanying the subpœna as to the three in which the right parties are named so that I may rule and you may have your exception, or the other side may have its exception.

MR. MATTHEWS: We shall issue subpœnas anew, your Honor, as we understand the law. Then, of course,

if your Honor quashes them, that is our concern, and if you are right we are wrong or if you are wrong we are right.

THE COURT: I think you should if you want to continue with what you think to be the right party, you should do it in the form of a petition.

MR. FRAZER: The practice is perfectly well established. I see no reason why we should have any argument of this kind over a futility. The practice is well established that there should be a petition based on something such as the reasonable knowledge that would be required to get a search warrant, let us say, and that that should be submitted to your Honor before these subpœnas are issued. I assume, from the type of subpœna as they were made, that the information would be so slender, so tenuous, that there would not be a fair basis for your Honor to order the subpœna to issue but we may at least argue that at that point.

THE COURT: The reason being, of course, that automatically the clerk issues the subpœna and we have to have a record of it for appeal.

MR. ROONEY: Also in connection with this and before the court adjourns, we had considerable difficulty in locating and serving a number of these people to whom the subpœnas were addressed.

THE COURT: I only had four.

MR. ROONEY: So that the effect——

THE COURT: Five.

MR. ROONEY: So that the effect of your Honor's ruling may be definitely understood, do we understand that these persons who are named in these subpœnas have to respond to this Court, because we will have difficulty in locating them and serving them again. In other words, we want them in court. If the Court rules on the sufficiency of the duces tecum as an auxiliary

matter, on the main subpœna we think we are entitled, inasmuch as they were served and brought within the——

THE COURT: There are only five. Mr. Hays was in court the other day.

MR. ERNST: Mr. Hays and Mr. Baldwin were in court in response to the subpœna; Mr. Carney and my myself have been here every day. Harry Ward was not here but his wife was here and spoke to Mr. Hamill at the time.

MR. FRAZER: Mr. Scott Nearing was here.

MR. ERNST: He is not one of our people.

MR. ROONEY: Do you represent the editor of the *Daily Worker*?

MR. ERNST: We do not, sir I have said clearly to the Court that I am representing five of these parties and those people were excused in part by you and not by me.

MR. ROONEY: Then all these witnesses will be produced, I understand?

MR. ERNST: I understand an arrangement has been made by Mr. Hamill with them, is that right, Jim? Did you make some arrangement with Mr. Baldwin as to letting him know when you wanted him?

MR. HAMILL: No, not as to Mr. Baldwin, we didn't hear from him at all, but you and I before the Court agreed that as to Dr. Ward we should not keep him and we agreed in general that the persons subpœnaed should hold themselves on call to be here within a reasonable time after they were notified by telephone.

THE COURT: I don't know Mr. Baldwin by sight, I do know Mr. Hays by sight; he was here the other day.

MR. ERNST: There is no difficulty in getting two of the five, two have been here every day; one sent his

wife because he is a Professor of Divinity in Union Theological Seminary.

MR. HAMILL: So long as we can get them we are not interested in holding them in court, your Honor.

(At this point an adjournment was taken to Tuesday, June 21, 1938, at 10:30 A. M.)

Tuesday, June 21, 1938.

Case continued.

Appearances as before.

FRANK HAGUE, resumed the stand.

THE COURT: All, right, Counselor.

MR. MATTHEWS: Yes, your Honor.

Your Honor, I am waiting for an exhibit which I left on the table inside.

THE COURT: That's all right.

MR. MATTHEWS: They have gone to get it.

Now, if your Honor please, at page 1772 in the testimony your Honor will recall we had a discussion about the testimony of Mr. Foster before the Fish Committee and your Honor wanted the hook-up between the CLU, the Civil Liberties Union, and the Garland Fund or the American Fund for Public Service, and Foster, and we showed Foster to be a director of the Garland Fund and——

MR. FRAZER: No, I beg your pardon. They read certain things out of newspapers.

MR. MATTHEWS: No, no; no, no. Here is a book. In this book here——

MR. FRAZER: That's not in evidence.

MR. MATTHEWS: —you find the name of Foster as one of the directors of the Garland Fund.

MR. FRAZER: All right; all right, that's a different statement, Mr. Matthews.

MR. MATTHEWS: Pardon me?

MR. FRAZER: That's a different statement. I don't say that his name may not be in that book. You have not proved it yet.

MR. MATTHEWS: And I now want to ask the witness whether or not he having said that he was familiar with the Fish report, whether or not he had not read the testimony of Mr. Foster from that report as outlined in the report.

MR. FRAZER: I object to the testimony of Mr. Foster as not being in any way binding on these plaintiffs or material to this issue.

CROSS-EXAMINATION (Continued).

By MR. MATTHEWS:

Q. (Continuing). 1011 of the report——

THE COURT: He asked the witness whether he read it or not. He may answer yes or no.

A. Yes, sir.

Q. In that report did you read——

MR. FRAZER: I object to Mr. Matthews' proceeding to read things out of the report purporting to have been stated by Mr. Foster.

MR. MATTHEWS: Your Honor has allowed it?

THE COURT: Yes. I also stated, Mr. Matthews, I wanted the testimony, not just the report.

MR. MATTHEWS: It is the testimony.

THE COURT: No, the whole testimony.

MR. MATTHEWS: I will give you that at the close of our case.

Q. Did you read: "The Chairman: Does the Communist Party of America advocate the confiscation of all private property?

"Mr. Foster: The Communist Party advocates the overthrow of the capitalist system and the confiscation of the social necessities of life; that is, the basic industries and other industries for producing the means of livelihood of the people. By the property of individuals, personal belongings, and so on, no; that is, in the sense of their personal property."

A. Yes, sir.

Q. "Does the party advocate the abolition and destruction of religious beliefs?

"Mr. Foster: Our party considers religion to be the opium of the people, as Karl Marx has stated, and we carry on propaganda for the liquidation of these prejudices among the workers."

Did you read that?

A. Yes, sir.

Q. "The Chairman: Do the Communists in this country advocate world revolution?

"Mr. Foster: Yes; the Communists in this country realize that America is connected up with the whole world system, and the capitalist system displays the same characteristics everywhere—everywhere it makes for the misery and exploitation of the workers—and it must be abolished, not only on an American scale, but on a world scale."

Did you read that?

A. Yes, sir.

Q. And this: "The Chairman: Now, are the Communists in this country opposed to our republican form of government?

"Mr. Foster: The capitalist democracy—most assuredly. We stand for a workers and farmers' gov-

ernment, a government of producers, not a government of exploiters.

"The Chairman: They are opposed to our republican form of government?

"Mr. Foster: Most assuredly.

And they desire to overthrow it through revolutionary methods?

"Mr. Foster: I would like to read from the program of the Communist International at this point: The Communist International program says: 'The conquest of power by the proletariat does not mean peaceful capturing of ready-made bourgeois state machinery by means of a parliamentary majority.' The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory and political domination. Like the feudal nobility of the past, the bourgeoisie cannot abandon its historical position to the new class without a desperate and frantic struggle; hence the violence of the bourgeoisie can only be suppressed by the stern violence of the proletariat.'"

Did you read that?

A. Yes, sir.

Q. And finally: "The Chairman: Now, if I understand you, the workers in this country look upon the Soviet Union as their country, is that right?

"Mr. Foster: The more advanced workers do.

"The Chairman: Look upon the Soviet Union as their country?

"Mr. Foster: Yes.

"The Chairman: They look upon the Soviet flag as their flag?

"Mr. Foster: The workers of this country and the workers of every country have only one flag and that is the Red flag. That is the flag of the proletarian revo-

lution. It is also incidentally the flag of the American Revolution in its earlier stages. The Red flag has been the flag of revolutions for many years before the Russian revolution.

"The Chairman: Could you answer a little more definitely and specifically whether you owe any allegiance to the American flag?

"Mr. Foster: I have stated my answer.

"The Chairman: I do not want to force you to answer if it embarrasses you, Mr. Foster.

"Mr. Foster: It does not embarrass me at all. I stated very clearly the Red flag is the flag of the revolutionary class, and we are part of the revolutionary class."

Did you read that?
A. Yes, sir.

THE COURT: We had in the other case last spring, as I remember it, Mr. Matthews, the actual platform of the Communist Party.

MR. MATTHEWS: Of course, your Honor, I don't know. I am perfectly willing if your Honor wants it to produce it, but from my cross-examination of this witness—of course, I had to prepare it according to my lights.

May I have the exhibit of the Newark *Star Eagle* that was introduced on last Friday? I don't remember the number.

THE CLERK: I will get it. Here it is (producing).

MR. MATTHEWS: I thank you.

Q. I show you Exhibit P-39 and ask you do you remember having been shown that by Mr. Frazer or by Mr. Ernst, I disremember which——
A. Mr. Ernst.

Q. That is a picture of you with your lawyers in this case, is it not?

A. Yes, sir.

Q. While we are waiting I will go on with another thing, at page 1681 of the testimony you were questioned by Mr. Ernst about sending people to New York and Mayor LaGuardia sending people back to Jersey City. I show you the New York *Tribune* of June 2d and ask you if you have seen the statement of Mayor LaGuardia with reference to crooks during the World Fair——

A. Yes.

MR. FRAZER: I object to that. He has seen the statement, he said.

Q. It is alleged there has been no instance of the Mayor sending people out of the city. I have read Mayor LaGuardia's statement that he will send them over the bridge instead of by the ferry.

MR. FRAZER: You know the proper way of proving that.

MR. MATTHEWS: Not so early in the morning, I do not want to be castigated by you.

With the Court's permission I will prove it.

The second paragraph, your Honor, down below. May I state for the record that I wanted to prove that there was another instance of a Mayor who decided on a way of sending people out of the city when he did not want them.

MR. FRAZER: Would you be kind enough to get away a little further so that we may hear the remarks by the Court, Mr. Matthews?

THE COURT: I will not allow it.

MR. MATTHEWS: The purpose was to show that the Mayor in another city had advocated the same treatment that this Mayor had advocated, and since they had put his statement on the record I thought it would be

nice to put ours. May I say what was said by the Mayor of New York?

THE COURT: I will not allow it.

Q. I show you another picture from the Jersey *Journal*, May 2, 1938, and ask you did you see that picture before?

A. Yes, sir.

Q. Do you recognize Mr. Thomas in that picture?

A. I do.

Q. That is he with his hand raised?

A. Yes.

MR. MATTHEWS: I ask that it be marked for identification.

THE COURT: I am not myself acquainted with the subtleties of the Communist salute; I think we should have an expert on that.

MR. MATTHEWS: I think he is an expert in the salute. I do not know anything about a Communist expert.

MR. FRAZER: I will also call your Honor's attention to the date; it is a way off from the matters complained of here.

THE COURT: What is the date?

MR. MATTHEWS: May 2d. The picture in the *Star Eagle* is June something.

THE COURT: What is the date of the event?

MR. MATTHEWS: What event?

THE COURT: What was it?

MR. MATTHEWS: May first would be parade day or May Day, whatever they call it.

MR. FRAZER: May Day.

MR. MATTHEWS: May I ask it be marked for identification?

(Marked Exhibit D-16 for Identification.)

MR. MATTHEWS: You testified on direct examination that you have been Mayor of Jersey City for almost a quarter of a century.

A. Yes, sir.

Q. During all of that time have you ever allowed strike breakers in your city?

A. Never.

Q. Will you state the policy you would have had with reference to strike breakers in Jersey City?

MR. FRAZER: I object to that; it is not cross-examination. We have not gone into the question of strike breakers in any way.

MR. MATTHEWS: His attitude toward labor has been questioned very largely. The only purpose is to show on cross-examination what his attitude toward labor has been.

THE COURT: It is a matter of defense.

MR. MATTHEWS: I do not want to offer it as defense, Judge Clark.

THE COURT: I will allow it.

Q. You may state it, the Court says.

A. I have always been opposed to importing strike breakers into labor disputes because from my experience and the experience that I am familiar with in other cities, it was always leading to bloodshed, riots and disorder, and the loss of life in a great many instances, so I make it a policy where there would be any labor controversies it would have to be adjusted around the conference table and not with shotguns and not with riots and disorder, and that my investigation with strike breakers led me to believe they were all ex-convicts and thugs and gangsters, and to import that element of people into my city would lead to nothing but the destruction of life and property and disorder. I make it a rule they should never be allowed into the city.

Q. Mayor Hague, from your clipping files in Jersey City have you had photostatic copies made of the New York *Times*, the New York *Sun*, and other papers which had to do in the year 1937 with the connection as alleged in the press between the CIO and the Communists?

A. I did.

MR. MATTHEWS: Instead of subpœnaing the files of the New York *Times* and the New York *Sun*, I have arranged to have these photostatic copies made. I would like, if your Honor please, to have the Mayor shown these and to ask him if they are photostats from the clippings from the papers he had.

THE COURT: All right.

Q. Are they, Mr. Mayor? They were handed to me this morning by the attorneys who have helped prepare the case. Will you look at them carefully, and when the paper you look at is before you give us the name of each one.

A. This the New York *American*——

MR. FRAZER: To save time I will ask Mr. Matthews whether they are labeled with the dates and the names of the papers from which they were taken?

MR. MATTHEWS: Yes.

MR. FRAZER: And you know they are properly labeled and dated?

MR. MATTHEWS: Yes.

MR. FRAZER: I am willing to take Mr. Matthews' statement for that.

MR. MATTHEWS: May I represent to Mr. Frazer that they were properly photostated from those papers and properly labeled and dated at the company's offices because Mayor Hague's clippings were all mixed up.

MR. FRAZER: Very well; if counsel represents to me that these are truthful statements as to the papers from which they are taken and the dates on which they were

published, I have no desire to waste the time of the Court in having futile statements to that effect made for each clip.

Q. These newspapers that were given to me this morning were newspapers that all related to the year 1937, weren't they, Mr. Mayor?

A. Yes, sir; yes, sir.

Q. And I asked you after the last hearing, because of the ruling of the Court that anything after 1938 could not be used, that you find if or not you had any records of 1937 papers.

A. I did.

Q. I show you the New York *American* for the 9th of March, 1937, an article by Tyrell Krum, Universal Service correspondent, "CIO drive launched in Moscow. Green says"——

MR. FRAZER: Now, I object, your Honor.

A. Yes, sir.

Q. Is that a paper which you actually read, Mr. Mayor?

A. Yes, sir; yes, sir; the *American*—I always read the *American*.

Q. The photostat has been made in the New York office of the paper, however. Why was that, Mr. Mayor?

A. Because we had the copies of it, and had the memorandum, and we sent over to get the original and get from the morgue just exactly what we learned of, and what we read and was familiar with.

Q. And when you say——

A. They were all photostated in the newspaper office.

Q. Yes. And when you say you had a record of them, did your secretary have a record—

A. Yes.

Q. —which I saw, of each individual newspaper?

A. Yes.

Q. And the reference thereto?

A. Yes. We wanted to keep our files.

Q. Where is the paper's name on this?

A. At the bottom.

Q. Oh, yes. I show you an article of the New York *Times* by Mr. Louis Stark, dated 5/24/37, headed "Red CIO assailed in A. F. of L. parley."

A. Yes, sir.

Q. Did you read that article?

A. I did.

Q. You are sure, Mr. Mayor, that at the time that article came out you read it?

A. I read it.

Q. And that this was photostated because of a reference that was in your files at that date?

A. I read every article on CIO and Communism and disorder and labor disputes.

MR. FRAZER: Now, are you going to ask the same——

MR. MATTHEWS: No, not many; I just want one or two more.

Just let me get over again here to Mr. Rooney. Will your Honor excuse me just a minute? I will save time.

Q. I show you an article by Russell B. Porter—Russell B. Porter, yes—of the New York *Times*, dated 3/4/37. This is the beginning, "Flint prepares for new riots as crowds pour into strike zone." Did you read that article?

A. I did.

MR. MATTHEWS: May I leave the ones up to here, Spaulding?

MR. FRAZER: Sure.

MR. MATTHEWS: —so I can have them marked for identification? You can look at them, of course, if you like.

MR. FRAZER: All right.

Q. I ask if this is another of those clippings, dated 1/5/37, an article by Russell B. Porter, from the New York *Times*, headed, "4000 at Flint ask return to work. Mass meeting hears auto strike laid to minority of 5 per cent and prays for peace. Troops are reinforced. Rumbles of teamsters walk-out that might tie up the motor city."

Did you read that?

A. I did.

Q. That specific article, sir?

A. I did.

Q. I show you this one, dated 1/31/37, an article by Russell B. Porter of the New York *Times*, "Court test today on Flint sit-down. Men in plants arm. Strikers (quote) 'not worrying about any injunction' the GMC may obtain. Ready for five day siege. They have food as well as heavy clubs"——

MR. FRAZER: I object.

Q. (Continuing.) —"blackjacks"——

MR. FRAZER: You have read enough to identify it, haven't you, Mr. Matthews?

MR. MATTHEWS: This is the headline only.

MR. FRAZER: All right. You have identified it. There is no use of reading it all into the record.

MR. MATTHEWS: I am not.

MR. FRAZER: I object to further reference to it. He has identified it.

Q. Did you read that, Mr. Mayor?

A. I did.

Q. I show you the *Herald Tribune* photostat and ask you again is that another one of those photostats made in the manner and after the reading that you testify you did in this case?

A. It is.

Q. And it is dated 2/3/37, and the headline, "C. I. O. program"——

MR. FRAZER: I object.

Q. (Continuing.) —"called path to Sovietization."

MR. FRAZER: I object to any further statement. May I ask the Court for a ruling? He has identified it and is having it marked for identification. The paper and date of the clip shown is completely sufficient.

THE COURT: Yes.

Q. I show you another one from the——

MR. MATTHEWS: What paper, Mr. Rooney, please?

MR. ROONEY: That is the New York *Times*.

Q. (Continuing.) —from the New York *Times*, dated 3/29/37, headed, "A. F. of L."——

MR. FRAZER: That is enough to identify it.

Q. (Continuing.) —"brands"——

MR. FRAZER: I object.

THE COURT: No, you must not.

MR. MATTHEWS: Well, your Honor, is all the article to——

THE COURT: Well, you are going to offer them in evidence, aren't you?

MR. MATTHEWS: On our case. I can't now.

THE COURT: Well, when you offer them in evidence, you can read them. You can't read them in part this way. Why waste time?

MR. MATTHEWS: I was only reading the headlines, Judge Clark.

MR. FRAZER: You can identify them and let them be marked for identification.

Q. Well, finally, did you see that one of 6/7/37? Just look at the headline; don't read it because the Court says it should be read on our direct case.

A. Yes.

MR. MATTHEWS: Now, if your Honor please, may I have the papers that I have thus far indicated marked in evidence seriatim?

THE COURT: Yes.

MR. FRAZER: Do you mean for identification?

MR. MATTHEWS: I mean for identification. I am sorry. I will try to give them to you seriatim.

Well, let's get the record straight on it. I will just refer to dates: New York *Times*, 5/24/37.

(Marked Exhibit D-17 for identification.)

MR. MATTHEWS: New York *American* 3/9/37.

(Marked Exhibit D-18 for identification.)

MR. MATTHEWS: New York *Times* 6/7/37.

(Marked Exhibit D-19 for identification.)

MR. MATTHEWS: New York *Times* 3/29/37.

(Marked Exhibit D-20 for identification.)

MR. MATTHEWS: New York *Times* 1/31/37.

(Marked Exhibit D-21 for identification.)

MR. MATTHEWS: New York *Times* 1/15/37.

(Marked Exhibit D-22 for identification.)

MR. MATTHEWS: New York *Times* 3/4/37.

(Marked Exhibit D-23 for identification.)

MR. MATTHEWS: *Herald Tribune* 2/3/37.

(Marked Exhibit D-24 for identification.)

MR. MATTHEWS: That, Judge Clark, doesn't happen to be the order that I presented them, but I thought it was better to have them identified for the record.

THE COURT: All right.

Q. Mr. Mayor, after twenty-five years as mayor of your city, I take it that you had occasion to know the temper

of your people of your city in November, 1937, and in January and February of 1938?

A. I did.

Q. What was the attitude of the people of your city as you knew it at that time?

MR. FRAZER: Now, even though he knows it, I object to his testifying.

THE COURT: We have had it a great many times, Mr. Matthews.

MR. MATTHEWS: Very well; if that is on the record and your Honor is satisfied that it is, I will withdraw the question.

Q. I show you a clipping taken again, Mr. Mayor, from the data presented to me this morning, and ask you whether or not you read that article.

MR. MATTHEWS: The name of the paper, please, Mr. Rooney?

THE WITNESS: New York *Times*.

Q. New York *Times*, 4/24/37?

A. Yes, sir.

Q. And is it an article referring to the CIO and the Reds?

A. It is.

MR. MATTHEWS: I ask that that be marked for identification.

(Marked Exhibit D-25 for identification.)

Q. Mr. Mayor, you are conversant, I suppose, with the difficulty the country has been experiencing, particularly the owners of plants, with the sit-down strikes during 1937?

A. I am.

Q. I show you a clipping with reference to the sit-down strikes of General Motors dated 2/31/36.

MR. FRAZER: May I ask what relevancy that has to our direct examination?

MR. MATTHEWS: It shows the tie-up between the CIO union and the violence of Communism.

MR. FRAZER: That, I imagine, is part of his defense.

MR. MATTHEWS: I asked the question because it shows something on this matter. It is cross-examination because the Mayor has said the CIO and the Communists were working hand in hand.

THE COURT: I have gathered that you intend to prove that fact. You just submit newspaper articles and opinions of certain persons.

MR. MATTHEWS: I wanted on cross-examination of this witness, when he was urged to say what was his reason for considering the connection between violence——

THE COURT: He has had that a great many times. The witness has been very explicit in his reasons.

MR. MATTHEWS: Doesn't your Honor think the sit-down strikes which is a CIO movement should be before your Honor?

THE COURT: It is a matter of defense, it seems to me. If permissible, it is certainly a matter of defense.

MR. MATTHEWS: This is cross-examination of a witness who alleged this violence and attitude of the CIO leaders permitted the attitude of a man like Carney who was leader of the CIO and was undesirable——

MR. FRAZER: I object to a speech by Mr. Matthews.

THE COURT: The witness has already asserted it several times.

MR. MATTHEWS: May I make the offer?

THE COURT: Yes, sir.

MR. MATTHEWS: I want to offer a clipping dated 2/31/36 of the New York *Times* dealing with the CIO and sit-downs and violence——

MR. FRAZER: I object to counsel's quoting what the statement is.

MR. MATTHEWS: That is the general subject that it deals with, sit-downs and violence.

MR. FRAZER: It is just a speech by Mr. Matthews.

THE COURT: I will ask the witness whether he read the stories in numerous papers which asserted that there were sit-down strikes in various parts of the country.

MR. MATTHEWS: The witness is to answer your Honor's question?

THE COURT: Yes.

By MR. MATTHEWS:

Q. Will you answer the Court's question?

A. Yes.

Q. What papers?

A. *Times, American, Herald Tribune,* the *Sun, World Telegram,* all the local papers, Jersey City local papers, Newark *Evening News*—as a matter of fact all the papers available in this part of the country.

Q. On those occasions did you have any others, on any occasion did you ever send for papers, particularly papers from the scenes of these strikes?

A. Yes. We made it a practice to write to the various police officials to obtain news articles to ascertain what their conduct was there.

MR. MATTHEWS: I ask that that be marked for identification.

(Marked D-26 for identification.)

MR. MATTHEWS: Your witness, gentlemen.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Mayor, you remember when we first started the examination together I was using a copy of your address at Jersey City on January 6th?

A. At the Armory?

Q. Yes.

A. Yes.

Q. You had occasion to refer to it on several occasions during the cross-examination and found it to be accurate?

A. I don't know whether that is my speech or not.

Q. Would you mind looking over it and telling me whether it is?

A. I talked for only about three minutes and I do not imagine I can deliver that speech in three minutes.

MR. MATTHEWS: I will stipulate it, Judge Clark, if he had delivered it. Is it a press release, Spaulding?

MR. FRAZER: It is the speech on the occasion of the radio relief.

THE WITNESS: Where did you obtain this?

Q. I don't know frankly.

A. Of course, I do not want to say it is my speech. Just parts of it—the opening, yes, yes.

Q. I had assumed it was a copy which had been sent around to the newspapers on the occasion of a press release.

MR. MATTHEWS: If you do not recognize it I will object to it.

MR. FRAZER: My associate counsel tells me that they obtained it from the station WOR.

A. I would rather you examined me on any part of it; I would rather not accept it as my speech. You examine me on any part of it. It is too lengthy.

Q. Did you send WOR a copy of what was to be your speech that evening in advance?

A. I do not know; I can't say that I did. That is apparently the rule, but I have never lived up to that rule because I have always held and made it a rule that that advance copy—I do not like it going out because Mr. Ernst

that night was ready to answer my speech and answer my talk and I withheld it, I am sure, for that purpose, because he was on the air right after me.

Q. You won't accept it?

MR. MATTHEWS: I can't accept it, Spaulding.

MR. FRAZER: I ask that it be marked for identification.

(Marked Exhibit P-41 for identification.)

Q. I show you here, Mr. Mayor, a clipping from the *Times* of December 27, 1937. I assume that you read the accounts of your own activities as they appear in those papers.

A. Where is the article concerning this? You have just cut out——

Q. Those are simply the remarks. It is a resume.

A. I don't know where this comes from.

Q. I will assure you it comes from the New York *Times*.

A. I will take your word for it.

Q. Thank you.

A. Yes.

Q. That substantially quotes you correctly?

A. Yes.

MR. FRAZER: I would like to offer that as a resume of the Mayor's remarks on that occasion.

MR. MATTHEWS: A resume or the quotations?

MR. FRAZER: The quotations.

MR. MATTHEWS: I have no objection.

MR. FRAZER: I offer it in evidence.

(Marked Exhibit P-42.)

Q. Mr. Mayor, I show you a clipping from the *Jersey Journal* of January 13, 1938, in reference to the Chamber of Commerce's fiftieth annual dinner at which you spoke. Do you recall that?

A. Yes.

Q. And I ask you whether that is substantially a report of the remarks that you made on that occasion?

MR. MATTHEWS: I object to that, if your Honor please; that calls for a conclusion. I have no objection to his being asked if he correctly quoted an article.

MR. FRAZER: I accept your amendation.

A. Yes, sir.

MR. FRAZER: I would like to offer that.

MR. MATTHEWS: If the Mayor recognizes his quotations—I take it only the quotations that you want to offer——

MR. FRAZER: That is all.

MR. MATTHEWS: No objection, then.

(Marked Exhibit P-43.)

Q. Now, Mr. Mayor, I think it was when Mr. Ernst was examining you that you stated you did not think that the City of Jersey City made any contribution to the expense of the veterans' meeting and that that was a matter of collection, if I recall.

A. I said it was possible; I was not sure.

Q. I show you a copy of the *Jersey Journal* of January 6th, page 9, and ask you whether an examination of that advertisement would refresh your memory as to whether or not there was a payment made by the city itself?

A. I don't think so; I don't think it has been paid yet, and the City of Jersey City is not going to pay it; it is going to be paid by the committee. Without the city has paid it I do not think it has been paid—that the bill has been approved by the city. My recollection is that they are not going to pay it and it is going to be paid by the committee.

Q. The proclamation on that page was made in your capacity as Mayor?

A. Yes, calling the people to respond to the call for Americanism.

MR. FRAZER: I offer it in evidence.

MR. MATTHEWS: I have no objection—just the one page?

MR. FRAZER: Just the one page.

THE WITNESS: There is three papers.

Q. Three pages?

A. Three papers; the *Jersey Journal*, the *Hudson Dispatch*, and the *Hudson Observer*.

(The same was received and marked Exhibit P-44.)

Q. Mr. Mayor, I show you here a clipping from the *Jersey Journal* of January 7, 1938, with what is alleged to be the text of your January 6th meeting.

A. This is the same as the ones that you showed me, isn't it?

Q. I assumed that it was because I assumed that both of them were accurate.

A. I assume that is correct.

MR. HERSHENSTEIN: He is reading the whole thing.

THE WITNESS: I would like to know whether the reporter got a copy of my address or whether he took that down that way. That looks like my address here.

Q. Would you be willing to identify it as your address?

A. Why, yes; I see nothing in it.

MR. FRAZER: I offer it in evidence.

MR. MATTHEWS: No objection. If the Mayor says that he said it.

(Marked Exhibit P-45.)

THE WITNESS: It is a patriotic address; I have no apologies of that.

Q. The recent great rally in Jersey City where you had a great parade and so on, that was also stimulated by your activity as Mayor, was it not, and I show you——

A. Isn't that the same one?

Q. No. This is June 3d. The other was preparatory to the earlier rally.

A. Was the other one for the armory?

Q. No, it was for the veterans. It was at the armory, I guess, yes. That was for the January 6th one, Mr. Mayor.

A. That is the armory.

Q. The one I am now showing you was preparatory to the demonstration in June?

A. Yes, sir.

Q. That proclamation was issued by you as Mayor of the City of Jersey City?

A. Yes, sir.

Q. And addressed to the people of Jersey City?

A. Yes, sir.

MR. FRAZER: I offer it in evidence.

MR. MATTHEWS: I have no objection to it.

(Marked Exhibit P-46.)

Q. Were the expenses for that paid by the city?

A. I don't know, but I would like to examine the records. I see nothing wrong for that, though, because it is a city matter; it is protecting the invasion of this Red army from coming in and destroying the city.

Q. Now, Mr. Mayor, you have been following with a good deal of care the activities of Congressman Hamilton Fish, haven't you?

A. Well, any public man like that. He is devoting his time to public service. Any man like he is, conducting investigations, yes.

Q. And you thought your minds ran well along the same way?

A. Yes, I did.

Q. Now, I want to show you a clipping from the *Times* of May 7, 1938, in reference to some of Mr. Fish's activities, and ask whether that came to your attention or not.

MR. HERSHENSTEIN: Mr. Matthews.

May we take a look at this, Mr. Spaulding?

MR. FRAZER: Surely. There is nothing up my sleeve.

MR. MATTHEWS: I don't see anything in that. I will wait for the questions, Mr. Hershenstein.

With the Court's permission, I address my confrere who doesn't hear me.

A. Did you want to know did I read that?

Q. Yes.

A. Yes, sir.

Q. And did you see the bill which was referred to in that article as having been introduced by Mr. Fish?

A. I never seen the bill. I seen the article.

Q. Well, from the article would you recognize what I show you, H. R. 10553, as the bill which is here referred to?

MR. MATTHEWS: I object to that conclusion. It is not for him to say that the bill is what is referred to in the article. That is not the way to prove the bill.

THE COURT: I guess the bill is a public record, isn't it?

MR. MATTHEWS: Well, it is quite an irrelevant matter entirely. I know it is a public record.

THE WITNESS: Sure.

MR. FRAZER: Well, I just wanted to direct the Mayor's attention to the fact that this bill was sponsored by the Civil Liberties Union.

MR. MATTHEWS: I object to that, if your Honor please.

THE WITNESS: I don't know.

MR. MATTHEWS: As I said before,——

MR. FRAZER: Just one moment, Mr. Matthews.

MR. MATTHEWS: Well, may I put my objection and the ground for it on the record?

MR. FRAZER: Yes.

MR. MATTHEWS: There are many people who do things for purposes that are ulterior, or utilitarian, and yet their ultimate, their final purpose, may be entirely different. I don't think it is relevant what the Civil Liberties League may have done in that matter, to this issue.

MR. FRAZER: Mr. Fish has been relied upon, and his views, reports about what he has done, everything has been put in here, almost ad nauseam, by Mr. Matthews, and I think it is at least proper that the Mayor, who admits having read this, should be enabled now to express the effect which such a statement has upon his mind.

MR. MATTHEWS: It is totally irrelevant to this issue, what Mr. Fish——

THE COURT: Well, it seemed to be the assertion, Mr. Matthews, am I correct in saying this, that Congressman Fish had a poor opinion of the American Civil Liberties Union?

MR. MATTHEWS: There isn't any question about it; not a poor opinion, but an opinion that was subversive of Americanism.

THE COURT: Well, then, it seems to me relevant if it is a fact that his opinion is not unqualifiedly poor.

MR. MATTHEWS: That is an absolute non sequitur, with respect to the Court. If, for instance, one of the bishops whom they used as a front to this organization in 1938 joined it mistakenly, I know they wouldn't be with it if they believed what is in the Fish Report. Now, if they came to Mr. Fish and asked him to sponsor a bill, certainly Mr. Fish would do it in the manner as you say.

THE COURT: Well, as I say, I don't know what connection—let me see the bill.

MR. FRAZER: The bill and the clipping in relation to it, sir. (Handing to the Court.)

MR. MATTHEWS: It seems to me, your Honor, that is the nearest consistency of rulings that since that had no relevancy to this issue, it shouldn't be lugged in here now.

THE COURT: Well, I will only allow it for identification, Dean Frazer, on the theory that it will have to be shown more closely, the connection between this American Civil Liberties Union and Mr. Fish.

MR. MATTHEWS: The bill wasn't passed, I am informed by Mr. Hershenstein.

THE COURT: I don't think it is relevant. It is only the mental state of the Congressman.

MR. FRAZER: I am making this offer, sir, because Mr. Fish has been brought in here, for all the statements that he has made about the Civil Liberties. Now, it is very possible that since the time of the Fish Report in 1931 and this date, Mr. Fish has realized that the Civil Liberties Union has a function to perform, quite other than that which he thought it had to perform in 1938.

MR. MATTHEWS: I object to that statement.

MR. FRAZER: And the fact that he is now fathering, sponsoring, legislation, at the request of the Civil Liberties Union, would indicate that he had changed his mind as to their character.

THE COURT: Well, it would seem to me that if Congressman Fish's mental state was a relevant issue, we should gather it from him, himself, not from some other evidence.

MR. MATTHEWS: Yes, I think your Honor is right.

THE COURT: Because the word "sponsored," as it appears in the newspaper article, may or may not be accurate.

Q. Mr. Mayor, did you believe——

THE COURT: I don't say that it isn't relevant, but it isn't properly proved; therefore you may mark it for identification.

MR. MATTHEWS: I accept your Honor's ground for my objection.

Q. After reading this article, did you believe that Mr. Fish had sponsored the bill?

A. Well, the article shows he did, Counselor.

Q. Yes.

A. Yes, sir.

Q. And on behalf of the American Civil Liberties Union?

A. So the article says.

Q. And you believed that when you read it in an article like this?

A. Well, I doubt whether I believed that about Mr. Fish, after his attitude and his opposition to the Civil Liberties. I would like to have more proof. I don't understand it.

Q. But in conjunction with the official copy of the bill which I have here.

A. Yes, that was fathered by him.

Q. And the statement, it was introduced by him at least?

A. Yes.

MR. FRAZER: I ask to have that marked for identification.

THE CLERK: As one exhibit?

MR. FRAZER: As one exhibit.

(Marked Exhibit P-47 for identification.)

Q. When the Young Investigating Committee came into Jersey City, did you regard that as an invasion, Mr. Mayor?

MR. MATTHEWS: I object, if your Honor please. That is totally irrelevant to this issue.

THE COURT: Yes, I sustain the objection.

MR. FRAZER: Exception, please.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Now, I understand that just recently, under the examination by Mr. Matthews, you said that you permitted no strikebreakers in Jersey City.

A. That's right.

Q. What was the difficulty in 1933, affecting the Hudson Builders Material Company and the Thomas Henry Company?

A. (No answer.)

Q. Do you remember a case where there was a lockout in Jersey City?

A. That was the coal drivers, wasn't it, and the building material drivers also?

Q. Yes. There was a lockout, wasn't there?

A. Yes.

Q. When there is a lockout the persons who take the places of those who are locked out are strikebreakers, aren't they, to all intents and purposes?

A. It depends upon where they come from. Our rule is that they must employ the local citizens to fill the places of those men on strike, that they are not to import thugs and gorillas into the city. That's out.

Q. Well, after A. F. of L. men were thrown out by their employers, you put upon all of the trucks that went to those places a policeman, didn't you?

MR. MATTHEWS: "You put on"—I object to that.

A. No, sir, I did not.

Q. The police department of Jersey City——

A. We never allow a policeman to go on a truck or any other vehicle passing through the city. You will find that there may be two or three trucks moving with a police car following them around the streets, to protect them from

assaults and disorder. Naturally, you have got to give them some police protection, if they move vehicles through the city.

Q. Where did you get these men from that took the place of those who were locked out?

A. Well, you had better ask them.

Q. Do you know?

A. Don't ask me about that. My understanding is they were employees of the concern that failed to go out on strike.

Q. Well, your distinction then is that you are not against local strikebreakers but only foreign ones, is that it?

A. I wouldn't consider a man a strikebreaker that's employed and fails to go out and refuses to go out on strike, and agree with his fellow men, if he wants to stay in, and if he wants to work. What's wrong with him?

Q. Well, if the bosses feel that they can't get along with the A. F. of L. union and therefore refuse to employ the men who have been in their employment for a long time, that's what we call a lockout, isn't it?

A. That's a lockout.

Q. Now, you say that if those persons who come to take the places of the men locked out, come from Jersey City, it is all right, is that it?

A. I wouldn't brand them as strikebreakers. I have never—my interpretation of strikebreakers is as I outlined here about the rough house gorilla tactics, destroying property and life and disturbances—that's strikebreakers. Where there is a labor controversy and a dispute, then—and some of the men refuse to go out on strike, they want to work, they are entitled to protection. If in addition to that, there is some men idle that's in the neighborhood that wants to work, and they think that in order to obtain this type of work to support their family—I won't classify them as thugs and disturbing element. I won't say that they are not strikebreakers as christened by men in the unions today. They consider any man who takes a position—they don't call them strikebreakers; they call them scabs.

Q. So you will protect scabs but not strikebreakers, is that it?

A. I am not protecting anybody. I am protecting life and property.

Q. Well, now, in this particular case that we were discussing, Mr. Mayor, the police did afford almost continuous protection to the Hudson Builders Material Company and the Thomas Henry Company, didn't they?

A. I believe that's so.

Q. That Hudson Builders Material Company was owned by William V. O'Driscoll——

MR. MATTHEWS: Now, I object, if your Honor please, to the ownership of this company.

A. Oh, I don't know. I know he is in the building material business.

MR. MATTHEWS: As irrelevant.

A. (Continuing.) But I don't know anything about him having any strike or any trouble. I don't think he has any employees. If he has two, he has got a lot.

Q. He has been an important politician in Jersey City, hasn't he?

A. Very good, no better.

Q. Judge and sheriff and so on?

A. Yes. And what restricts him from going into private business?

Q. Nothing at all.

A. Well, why criticize him?

Q. I am not criticizing him. I am merely asking questions. If I were in his position I would like it too, I am sure.

Q. Did you succeed in locating the correspondence between you and Mr. Hoover, Edgar Hoover?

A. No. You issued a subpœna for that.

MR. HAMILL: No, we have sent for that correspondence and only twenty minutes ago a telephone call was put through to Jersey City, and the answer I have just

received is that the correspondence cannot be located. Now, let me say this, that we did all of this work as an act of goodness on our part toward counsel on the other side. We were not obliged to do it. And we will not take kindly to any criticism whatsoever. If counsel on the other side believe that they need the correspondence or need an explanation of it, why they can serve a subpœna on the director of public safety or those who have charge of the records, whoever they are, and discover it by testimony in open court. That is, discover the information as to the search that was made.

MR. FRAZER: I understood Mr. Hamill to accept the subpœna which we issued something over a week ago while the mayor was on the stand, with the idea that the documents would certainly be able to be found in that time.

MR. HAMILL: Well, assuming, Dean Frazer, that what you say is correct, my answer is this: and we did make diligent search, according to the reports I have received, and that a diligent search has not disclosed the existence in the files of those papers.

MR. FRAZER: All right. In other words, you haven't the papers.

MR. HAMILL: We haven't the papers. Yes, that's correct.

THE WITNESS: Let me answer this. Counselor, I don't think there is any communications. The system is that the Department of Justice has inspectors that go from police headquarters to police headquarters and make this investigation and there, upon the asking for certain records, if it is denied, they declare and make known their attitude right on the presence, in police headquarters. Then he reports back to his superior, and then he is advised not to go back to that station any more, because the records are not available as they say.

MR. HAMILL: Well, now, Dean Frazer, why do you say there are letters?

THE WITNESS: There is no letters.

MR. HAMILL: Who in this courtroom says there are letters?

MR. FRAZER: We said the records, correspondence, whatever it was, which showed the attitude between the City of Jersey City police and the statistical departments and Mr. Hoover's action in not longer incorporating in the records of his department the criminal statistics of Jersey City. That's all we want.

MR. HAMILL: Now, don't go for a minute. Of course, they won't send them to you. You said there were letters. Now, on what information did you base your subpœna that there were letters? From what sources did you get your information?

MR. FRAZER: I think it was something that the mayor said, that they wouldn't send them.

THE WITNESS: No, no.

MR. FRAZER: And there was a dispute——

THE WITNESS: Mr. Ernst said it, not me.

MR. HAMILL: In other words——

MR. FRAZER: There was a dispute as to who excluded them from Hoover's book, whether it was on Mr. Hoover's action or whether it was on the action of the Jersey City authorities.

MR. HAMILL: Let's have it understood. On a mere suspicion—worse than that; on a mere surmise, on a conjecture, you came to the conclusion that there were letters and took a chance of serving a subpœna wildly on me, and I in graciousness to you had a search made, and it is now settled on this record that there is no such correspondence.

MR. FRAZER: Very good. You have always been courteous, Mr. Hamill.

MR. HAMILL: Well, and I must say that in this instance you have been extremely—what shall I say?

THE WITNESS: Polite.

MR. HAMILL: Candid.

Q. Mr. Mayor, I show you a clipping from the *New York Times* of the 18th of June, which refers to the little dispute that Mr. Hamill and I have just been having, and follows it with an alleged statement from Mr. Hoover. Did you see that?

A. Yes, sir.

Q. Now, do you agree with it?

A. Well, I think that the head of the bureau was a little in error in that. I feel that it was because of us refusing to permit automobile accidents that developed in death, to charge them with murder. They insisted that we should charge them with murder, and of course that's where the controversy took place, and it discontinued. There was no report sent in by us.

Q. Well, Mr. Hoover——

A. If there were, they wasn't recognized, because we refused to put in murder, homicides, where automobile accidents took place.

Q. Well, all the other cities were under the same classification, weren't they?

A. No, the law—somebody passed a law in the State of New Jersey, compelling at the arresting of every accident where death occurs, that the person must be charged with murder. Now, I have disagreed with that, even though it is the law. I can never condone myself to the fact that a woman or a boy or a girl should be charged with murder in an automobile accident; and I don't allow it because even though it is the state law, I think it is very, very unfair.

Q. But the City of Newark is under that disadvantage?

A. Well, if they do that, that's up to them. I don't care.

Q. So that if you exclude yours from your records and the City of Newark complies with the law, then the crime record of Newark appears much worse in comparison to yours than it is.

MR. MATTHEWS: I object, if your Honor please.

A. We went to the prosecutor of the pleas, we went to the judges and had a conference with the judges, and we called the attention of the Court, called the attention of the district attorney, to the unfairness of this law, and we asked them to advise us how to proceed, that we thought it was very unfair, and they worked out a method whereby these people are not charged with this murder.

Q. Well, now——

A. That's what led to the entire dispute between Mr. Hoover's department and the City of Jersey City.

Q. Now, Mr. Hoover is quoted here as saying——

A. Up to that time, Counselor, every report that the Department of Justice had made showed Jersey City with the lowest in this country.

Q. The lowest what?

A. Of crime.

Q. Mr. Hoover is quoted as saying Jersey City has continued sending him monthly reports for the Bureau since 1935.

A. My understanding, Counselor, was that the controversy that took place discontinued any further reports because they were not accepted.

Q. You don't know, then, whether it is a fact that these reports are continuing or are rejected by Hoover, as he states?

A. Oh, they are not continuing.

Q. You are sure of that?

A. I am sure of that.

Q. Now, Mr. Mayor, I understood you to say that until the recent troubles starting with your so-called invasion of Jersey City in——

MR. MATTHEWS: You do not mean *your invasion?*

MR. FRAZER: It was his expression.

MR. MATTHEWS: What he calls *invasion.*

Q. That you had never had any trouble with the so-called constitutional rights of free speech, freedom of assembly and freedom of the press?

A. I don't know just what you are referring to. If you are referring to some little minor matter——

Q. I am asking you whether there was any period when the question of free press and free speech and freedom of assembly became a very much discussed point in Jersey City.

A. Yes; this present one.

Q. No; long before that.

A. Long before it?

Q. I call your attention to a photograph and ask you whether you can identify the scene and the approximate time from the picture?

A. What is this?

Q. Isn't that Journal Square?

A. I don't know; it looks like it.

Q. You see over here the sign.

A. That looks like Journal Square.

Q. That is your name there, isn't it, and some commissioners?

A. Yes. It looks like them—— It says to reelect——

Q. Re-elect whom?

A. Re-elect Frank Hague.

Q. There is somebody else there?

A. Yes, Michael I. , John Fagans, William E. Quinn, Arthur Potterton—what is this?

A. I don't know; that looks like a political meeting.

Q. It looks like it to me, too.

A. Is that Jeff Burkitt? That looks like Jeff Burkitt.

Q. Can you see what is on there?

A. *Free speech.*

Q. And *free press?*

A. That looks like an act of Jeff's.

Q. Do you know whether there was any violence at that meeting?

MR. MATTHEWS: Let us have the date.

MR. FRAZER: I don't know the exact date. The Mayor was in that campaign, obviously.

MR. MATTHEWS: The Mayor has been in every campaign.

Q. Mr. Mayor, what campaign was it in which these gentlemen were running with you that you have just mentioned?

MR. MATTHEWS: They ran together several times.

A. They ran in 1929. Jeff was quite an actor in that campaign.

Q. Then he was arrested in that campaign, was he, for making a speech in front of the court house?

A. No, Jeff was not arrested; I don't think so. In front of the court house? There was some trouble at the court house. We had a big rally at the high school two blocks away and I believe there was some little controversy at the court house steps because they tried to hold a meeting——

Q. He was arrested and tried and convicted, as he was recently, and had it set aside by Judge Brown on appeal?

A. There was an arrest and a conviction and there was an appeal and it was set aside.

Q. The charge was the same as the present charge?

A. No, no. He kicked a police officer in the chest this time. There is a vast difference in that. His language was something terrible.

Q. I am told there is a man named Peterson in here.

A. Who is Peterson?

Q. I thought you knew him.

A. I know the officer standing there is apparently very happy. There is no trouble, apparently. Here are some other officers and some others here.

Q. Is it surprising to you that the officers standing there are standing there quietly while people are throwing things?

MR. MATTHEWS: I object to that. There is the picture.

A. The only time they ran afoul of anything was on the city hall steps early in the campaign. Somebody hit him with an egg or something.

Q. And he was arrested in that campaign, wasn't he?

A. I don't know; I don't think he was arrested that time. He got a bath for the first time in ten years.

MR. FRAZER: I ask that be marked for identification. Is there any objection to its going into evidence?

MR. MATTHEWS: I have.

MR. FRAZER: May I ask whether your objections go to the relevancy or to the method of proof?

MR. MATTHEWS: Both.

MR. FRAZER: I ask that it be marked for identification.

(Marked Exhibit P-48 for identification.)

Q. Mr. Mayor, you wouldn't know whether this meeting at about this time, whether that meeting was held at any particular time by identification of any of the people on the stand, or whether it was a meeting called at the behest of the veterans?

MR. MATTHEWS: I object to this attempt to get the picture into evidence.

MR. FRAZER: No, I am going to make some further successful attempts.

A. During that meeting there were five hundred characters. I cannot single out any particular one. The records will show that we granted Burkitt and his crowd four hun-

dred or five hundred permits to hold meetings. We didn't deny any privilege of free speech to them.

Q. Do the records indicate any disturbance at these meetings?

A. No. As I say, only one meeting at the city hall.

Q. And wasn't Peterson, whom I was referring to, a gentleman on the stand, on the platform there, although I do not know him personally, and isn't he the Peterson who signed the letter to Commissioner Casey of December 27, 1937 which is in evidence here?

MR. MATTHEWS: Is there any question pending?

A. I can't prove that; I don't know him.

Q. You don't know him personally?

A. No.

Q. So you couldn't recognize him in any event, could you?

A. No.

Q. Now, I have here the list of permits apparently, Mr. Mayor. Can you show me any permits to Jeff Burkitt in 1929?

A. No, it wouldn't be on that—there was some party that he had——

MR. HERSHENSTEIN: I object to that.

Q. What was the name of his party?

A. He had so many parties that I wouldn't know.

Q. He was a Jeffersonian Democrat at that time, wasn't he?

MR. HERSHENSTEIN: If your Honor please, may I point out on April 27, 1926, Jefferson Burkitt, the Jefferson party had a permit to hold meetings; another on April 27th, May 10th, Jefferson Party, Burkitt, permission to hold meetings, June 12th; Jefferson Burkitt, hold meeting Saturday night——

THE WITNESS: You will find he had meetings every night; two or three meetings, sometimes.

MR. HERSHENSTEIN: April 9th, Jeff Burkitt meeting; May 7th, May 9th, May 13th, all Jeff Burkitt, another May 13th, Jeff Burkitt in the Fifth Precinct tonight. That is about ten or twelve, isn't it?

MR. FRAZER: Yes, just about.

MR. HERSHENSTEIN: I think you will find another dozen if you wade through it.

THE WITNESS: I am talking now during his presence in Jersey City. He comes from out of town.

Q. Will you look in 1929?

MR. FRAZER: Mr. Hershenstein, would you mind looking in 1929 and see whether there was any permit granted to the Veteran's Independent Association in April or May of that year?

Q. Mr. Mayor, if you take my glasses on top of your own, they are just magnifying glasses, you will probably read what is at the bottom. You are not going to hang anybody on that.

A. No, I am not going to hang anyone.

Q. I don't suppose you are.

MR. HERSHENSTEIN: There are two of April 24, 1929, Jeff Burkitt——

MR. FRAZER: That was for the Veterans?

MR. HERSHENSTEIN: April 18, Burkitt party, Jackson and Orient; April 18, Jefferson Burkitt, Jackson and Orient.

Q. I will not ask you to bother with this any longer. I was trying to get a verification of the date of the meetings.

MR. HERSHENSTEIN: The question was whether there was any information about Mr. Burkitt.

MR. FRAZER: I have no further questions.

MR. MATTHEWS: I am finished with you, Mr. Mayor, as far as I am concerned.

THE WITNESS: Judge, I would like to be permitted to make a public statement involving Mr. Ernst.

THE COURT: Not from the witness stand.

THE WITNESS: It involves the court.

THE COURT: No.

THE WITNESS: I have proofs; I have records.

THE COURT: You will have to offer it through your counsel in evidence.

THE WITNESS: I submit myself to be examined by everyone and I feel very much disappointed if I am not permitted—he was discussing his——

THE COURT: You must confer with your counsel first.

MR. MATTHEWS: You may confer with me and then I will confer with his Honor.

THE WITNESS: It involves this gentleman and involves the integrity of this court.

THE COURT: I will adjourn until twelve o'clock.

MR. MATTHEWS: Then may I see your Honor?

THE COURT: Yes, you may come to my office.

(Short recess.)

(Following a short recess.)

THE COURT: Go ahead. How many more witnesses have you, Dean Frazer?

MR. FRAZER: Just one, a very brief one.

THE COURT: Will you call him, please.

MR. FRAZER: Mr. Callahan.

WILLIAM CALLAHAN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

MR. MATTHEWS: Just a minute, Judge Clark. I wish you would instruct the newspaper men—this is a good gentleman, all right, but I can't tell him, frankly, about our conference or anything of that kind. I don't want to be cross with him or anything of that kind. He wanted to know about the conference that the Court had. I said he would have to talk to the Court, if there was any conference.

THE COURT: No, that would not be proper. I think I have been very patient with the newspaper men, and I am sure you won't violate my admonitions. Go ahead.

MR. FRAZER: Mr. Callahan has been sworn, I think.

THE CLERK: Yes, he has.

Q. Mr. Callahan, there were certain letters exchanged between you and Director Casey in relation to an application which you made on behalf of the Catholic Worker, as I understand it?

A. Yes.

Q. For leave to speak in Jersey City?

A. That's right.

Q. And under the date of May 4, 1938, your application was denied?

A. Yes, sir.

Q. Did you at any time return to Director Casey's office for the purpose of discussing the permit further?

A. I did.

Q. Do you remember when that was?

A. It was on either the ninth or tenth of May.

Q. Whom did you see there?

A. I saw a person who purported to be the secretary of Commissioner Casey.

Q. Do you know what his name was?

A. I didn't know his name then; I understand now his name is——

MR. MATHEWS: I object to the identification.

MR. FRAZER: I suppose that we usually learn a person's identity by having them introduced to us or learning from others. I suppose in the last analysis all the names of persons we find out are by hearsay.

By THE COURT:

Q. What is the fact? What happened?

A. The man represented himself to be Commissioner Casey's secretary.

Q. Would you know him again if you saw him?

A. I think so.

By MR. MATTHEWS:

Q. Is he in court, son?

A. I don't know.

MR. MATTHEWS: Is Director Casey's secretary here in court?

(No response.)

MR. MATTHEWS: I mean that for the purpose of identification only, your Honor.

By MR. FRAZER:

Q. This took place in Director Casey's office, as I understand?

A. Yes.

Q. What did the gentleman who represented himself to be Mr. Casey's secretary say with relation to the permits, if anything?

MR. MATTHEWS: I object to that.

THE COURT: You will have to have him here if there is any dispute about it.

Q. Did you obtain the permits?

A. No, I did not.
Q. Did you ask for them?
A. Yes, I did.

MR. FRAZER: That is all.

MR. MATTHEWS: No questions.

MR. FRAZER: I have another question to ask.

By MR. FRAZER:

Q. Did you state the names of the speakers that you wished to have address that meeting?
A. I didn't say.

MR. MATTHEWS: I object to that.

MR. FRAZER: He is testifying to his own actions.

MR. MATTHEWS: That is a statement he made to an unidentified person.

By THE COURT:

Q. You gave your name. Is that right?
A. Yes, sir.

By MR. FRAZER:

Q. In writing?

MR. MATTHEWS: I object to that.

THE COURT: On a written piece of paper?

THE WITNESS: On the stationery of the Catholic Workers.

THE COURT: We have had that several times, according to my recollection, Mr. Frazer.

MR. FRAZER: I think in the original correspondence, sir, the names of the speakers were not mentioned.

MR. MATTHEWS: Well, if that is the case, then the best way to do it would be to produce that record; and if he has it, it may be produced—I would have no ob-

jection. But I am a bit afraid of a conversation with an unidentified person.

THE COURT: Did you give him a sheet of paper?

THE WITNESS: I did.

THE COURT: Have you got the paper here?

THE WITNESS: No. I handed it in to Mr. Casey's office.

THE COURT: Then you will have to get that.

MR. FRAZER: We have subpœnaed those records, sir, and they have not been produced.

MR. MATTHEWS: Spaulding, that was before my time, so I don't know.

MR. FRAZER: All right; that is true, however.

MR. MATTHEWS: The record, gentleman—may I speak to my associates?

THE COURT: Yes, certainly.

MR. MATTHEWS: The record, gentleman, of an application for a permit by the Catholic Worker which was followed by a visit at which a letter was handed to a man in Director Casey's office, giving the names of the speakers; that record is sought and as is alleged has already been subpœnaed.

MR. FRAZER: I am offering secondary evidence since that was not produced under the subpœna and notice to produce, which we gave.

THE COURT: Well, you will have to have the secretary—do you know the man's name, the secretary's name? Did you say that?

THE WITNESS: Only by hearsay. He didn't tell me.

MR. MATTHEWS: You would identify him, though, young man, if you saw him, wouldn't you?

THE WITNESS: I believe so.

THE COURT: Well, tell us his name.

MR. MATTHEWS: Yes, what is it? I don't know. What is the name of the secretary to Director Casey?

THE COURT: I thought that was testified to the other day, wasn't it?

MR. ROONEY: Ask the witness. Ask the young man.

MR. MATTHEWS: He doesn't know.

THE COURT: What did you hear his name was?

THE WITNESS: Daly.

MR. MATTHEWS: Mr. Daly. Is that the name of the secretary of Director Casey?

MR. ROONEY: Daly, yes.

THE COURT: The Commissioner testified to that. That is the reason I know it.

MR. MATTHEWS: All right. That is the secretary's name, yes.

MR. FRAZER: Yes.

MR. MATTHEWS: We haven't any identification. He could be subpœnaed easily enough.

Q. What does the man look like, Mr. Callahan?
A. He is a tall man about six feet or over, I should say.

MR. MATTHEWS: Well, is the purpose of this testimony only to give the names of the speakers?

MR. FRAZER: That's all.

MR. MATTHEWS: Is that all?

Well, we can save you the trouble of producing Daly.

MR. FRAZER: That's all.

MR. MATTHEWS: If it is just for that. We don't want any conversation between——

MR. FRAZER: No, all we want is to show——

MR. MATTHEWS: All right.

MR. FRAZER: —that this man went back and renewed his application.

THE COURT: Well, tell us the names of the speakers.

MR. MATTHEWS: The names, yes.

THE WITNESS: The names of the speakers?

THE COURT: Yes, the names of the speakers that were on that paper.

THE WITNESS: Timothy O'Brien and myself.

MR. MATTHEWS: And you are Mister——

THE WITNESS: Callahan.

MR. FRAZER: Callahan. That's all.

MR. MATTHEWS: No questions.

MR. FRAZER: I would like to offer in evidence two cards which were marked during the course of the trial in identification. One is the Fairmount Hotel card, which was referred to in the testimony——

MR. MATTHEWS: That was before my time.

MR. FRAZER: Yes; and the other is this card which the Mayor identified.

MR. MATTHEWS: I have no objection.

(Received and marked Exhibits P-5 and P-9.)

MR. FRAZER: Now, in the matter of the picture which was just shown to the Mayor, if it please the Court, we are not presently able to identify it fully,

and I was wondering whether Mr. Matthews would object to our bringing such proof in later, merely for the purpose of bringing this thing up, the question of the offer of the picture.

MR. MATTHEWS: I don't see how the picture would have any relevance, if your Honor pleases, even though it is not presently possible.

THE COURT: Well, he is asking you if——

MR. MATTHEWS: I suppose that it should be offered before their case is closed, if it is going to be closed.

THE COURT: Well, what do you want to offer with respect to the picture?

MR. FRAZER: I simply want to offer the testimony of the man who took the picture and who was present at the meeting, to testify what happened on that occasion.

MR. MATTHEWS: I think that ought to be done now.

MR. FRAZER: I am not in a position to do so now.

MR. MATTHEWS: Well, you could by one o'clock, couldn't you?

MR. FRAZER: No, I think I might have to a longer time.

THE COURT: All right. If it would be relevant, I suppose you could offer it on rebuttal.

MR. FRAZER: Very well, then, I will reserve it for rebuttal.

MR. MATTHEWS: All right.

THE COURT: That closes the complainants' case?

Plaintiffs Rest.

MR. MATTHEWS: At this time, if your Honor please, may I ask for at least twenty-four hours' adjournment, and if possible, forty-eight hours, in order to prepare the motion to dismiss. Mr. O'Mara has made the request particularly for forty-eight hours. I told him if we could not get forty-eight hours and could get twenty-four, that it might do. We want to move to dismiss predicated on the evidence in the case. I have already analyzed a large part of the testimony that I participated in.

Mr. O'Mara has just returned to the room and may I ask to have the stenographer read the motion thus far to him?

(The reporter reads Mr. Matthews' motion.)

MR. MATTHEWS (Continuing.) And the testimony that Mr. O'Mara has participated in he has already partially analyzed. He was called to Baltimore at the end of last week and the beginning of this week, and that is the reason that the adjournment of forty-eight hours is asked for by Mr. O'Mara.

MR. O'MARA: I would like to join in the application, Judge Clark. I feel that we need that length of time to prepare the motion, which is an important one.

THE COURT: Some of the argument is already in.

MR. MATTHEWS: I raised a point yesterday—it never came into the case, that the testimony did not warrant it, but the testimony latterly in the case did warrant raising that point.

THE COURT: Can we occupy ourselves in the meantime with the question of subpœnas? I am not intending to inflict a hardship on counsel, of course.

MR. MATTHEWS: That would presuppose that we would need them.

THE COURT: Not necessarily. I suppose in any motion in the simplest case you always provide for both contingencies.

MR. ERNST: If your Honor please, it would be quite embarrassing to us to have any adjournment. I know of no case that I have ever been engaged in in which there was such a request made, particularly when in the first pages, the first ten or twelve pages of the testimony, if you will read them, you will see that counsel for the defendants on five of the six, or six of the seven points in the bill, as we read their statement, conceded either that the acts—either were not committed, or that if they were committed would be discontinued. There is a sufficient body of law to support the position that when counsel have so stated in open court that the court can take those statements into consideration and deny the defenses in those respects.

THE COURT: Have you amended the pleadings yet?

MR. ERNST: May I add one more thing, if the Court please? We have the cases in court along that line. In our opinion the statements foreclose any defenses and under those circumstances, to ask for delay is quite embarrassing to us. We also have matters to take care of elsewhere and without any prejudice to Mr. Matthews it seems to me that we can proceed tomorrow. Or he may make such motions as he sees fit and file briefs tomorrow—making the motions today and filing the briefs tomorrow.

We will make our motions today as well.

MR. O'MARA: May I say a word in reference to what Mr. Ernst has said concerning the first ten or twelve pages of the testimony? I assume he refers to the statement of Mr. Hamill in the opening of the case which later became the subject matter of an order to be drawn by the parties if they could consent to it. That was done with the distinct understanding that if the parties could not reach a conclusion satisfactory to all counsel that this case was to proceed to trial. All of the associates raised that point in the pleadings and we were not foreclosed from any defense which we had.

THE COURT: Of course I will consider only testimony in the motion to dismiss.

MR. ERNST: We find ample law that where counsel makes a statement it can be taken in lieu of testimony. We have the cases here.

MR. FRAZER: I am calling your Honor's attention to the fact that it was made by way of compromise. That was your Honor's contention, to see whether we could embody the statement made in Mr. Hamill's remarks. There was no claim whatsoever——

THE COURT: As you know, Dean Frazer, there was no effort to conceal the efforts of all persons to settle the case. The case was not settled and it has gone to trial, and therefore will have to be passed upon by the Court. I am disinclined, frankly, to harass counsel when they must be ready with an elaborate record. There is a short space of time, however, inasmuch as it is noon now and we have only the afternoon. I will give you one day beyond this, and I will insist that you be ready on Thursday morning.

MR. MATTHEWS: Thank you, your Honor, for that.

THE COURT: I will insist that you have the petitions with respect to the subpœnas filed so that I may also consider them if I have to consider them, and also your amendments if I have to consider them. In other words, all the legal issues should be fully exploited by Thursday.

MR. MATTHEWS: May I say that to my confreres?

THE COURT: In other words, the motion comes first. If that is decided adversely to the defendants, then the question of the subpœnas comes next.

MR. MATTHEWS: Doesn't your Honor think that we ought to have the amendment on the record first?

THE COURT: Yes, the amendment first.

MR. ERNST: If your Honor please, in view of the fact that you are granting the adjournment, may I ask that we be supplied with the proposed amendments, with the points

of the motion, and copies of the petition by tomorrow noon so that we are in a position to give them some consideration?

THE COURT: Yes.

MR. MATTHEWS: Will you look to Mr. O'Mara for that, sir?

MR. ERNST: I would like to file with the Court the affidavit in regard to the proposal to hold a witness in this case in contempt and giving a copy of it to Mr. O'Mara. Briefs will be here this afternoon. If we are adjourning, I will submit the briefs tomorrow morning and copies to Mr. O'Mara.

MR. O'MARA: May I submit answering briefs?

THE COURT: Yes.
We will adjourn until Thursday morning at 10:30.

(Thereupon an adjournment was taken to Thursday morning, June 23, 1938, at 10:30.)

Thursday, June 23, 1938.

Case continued.

Appearances as before.

MR. MATTHEWS: Your Honor please, I wish to offer the amendment prepared by my associates. A copy was given to Mr. Ernst, I understand, yesterday.

THE COURT: Will you mark it filed, Mr. Jaeckel?

MR. MATTHEWS: Now, your Honor asked that all other legal questions in process of discussion before you be settled this morning, and as I understand the record will show that your Honor has directed, and we agree, that all of the subpœnas except those calling for the CIO records, the American Civil Liberties Union records and the Garland Fund records, should have been directed to different people; and

that new subpœnas accompanied by petitions should issue. That we agree to. We desire to stand on the subpœnas originally issued in both the CIO, the American Civil Liberties Union and the Garland Fund. In other words, we wish to maintain, with respect to the Court, that they are sufficient in law.

Now, if your Honor is of the opinion that they are not, then we merely ask your Honor to give us an exception to that ruling.

THE COURT: Well, of course, Mr. Matthews, I haven't even considered it.

MR. MATTHEWS: Oh; then we are ready to proceed with the defense, after that. Those were the three matters that——

THE COURT: Yes; but I understand that you wish to stand on the subpœnas as written.

MR. MATTHEWS: The subpœnas as they were, with reference to those three only, your Honor.

THE COURT: Yes. Well, I will have to examine the subpœnas with more care and make some examinations into the authorities on the point.

MR. MATTHEWS: Yes.

Now, I desire, if your Honor please, to offer in evidence the following exhibits which have been marked for identification.

MR. ERNST: Your Honor, may I just interrupt a moment? I can let you have the subpœnas, unless copies are available to you.

MR. MATTHEWS: Very good.

THE COURT: I think I gave back the copies that were so kindly given to me by counsel over the week end.

MR. ERNST: Yes. I have the four subpœnas here, addressed to Ward, Ernst; Carney and Baldwin, which I take it are the ones to which Mr. Matthews now refers.

MR. MATTHEWS: I would like to look at the Baldwin one, sir.

MR. ERNST: Plus one that may be within the scope of his remarks, the one issued to Arthur Garfield Hays, whom I represent on this matter.

MR. MATTHEWS: May I interrupt you? It is only as to the Civil Liberties Union. It isn't that International Committee that is on there.

MR. ERNST: No, I understand that.

MR. MATTHEWS: All right.

MR. ERNST: But, you see, the Civil Liberties Union is on various subpœnas.

MR. MATTHEWS: Yes.

MR. ERNST: It isn't only Baldwin.

May I also say, your Honor, I will be glad to supply a brief tomorrow. I have briefed the law on the subject of these subpœnas. I haven't got it in comprehensive brief form, but I have all the references to the cases.

THE COURT: I looked up some law the other day, but, as I say, I hadn't completely considered it.

MR. MATTHEWS: The first exhibit that I desire to offer in evidence is the Fish report in those matters that have been testified to already, and I have the certification of South Trimble, attached to it, your Honor. It is the only one that hasn't been marked for identification.

MR. ERNST: I understand, your Honor, it is offered in evidence for the sole purpose of proving that Mayor Hague had looked at it on certain occasions.

MR. MATTHEWS: And it had helped to form his state of mind.

MR. ERNST: That's right; no objection.

(Received and marked Exhibit D-27.)

MR. MATTHEWS: I also wish to offer in evidence D-1 for identification, which is the reference to a speech made by counsel for the petitioners, Mr. Ernst, and attached to it in the form of D-2 is Mr. Ernst's denial that he is correctly quoted.

(Received and marked Exhibit D-1 in evidence.)

MR. MATTHEWS: Also I offer for the same purpose D-2 for identification.

MR. ERNST: No objection.

(Received and marked Exhibit D-2 in evidence.)

MR. MATTHEWS: Also the five photographs of the gentlemen who were arrested in Jersey City and were searched and a gun was found on them, D-3, 4, 5, 6 and 7.

MR. ERNST: The purpose of this offer is what? I don't understand. There is no evidence, as I understand it, that there is any connection between those people and the parties plaintiff.

MR. MATTHEWS: There was a discussion and allegation that the cars were searched—shall I say ruthlessly or unwisely and so forth and so on.

MR. ERNST: I take it this offer is made on the theory that in a particular case a search indicated an allegation that a gun was found. As I recall the testimony there has been an indictment but no trial.

MR. MATTHEWS: It is offered for the same purpose that it was offered for identification, your Honor.

THE COURT: They will be admitted.

(Received and marked Exhibits D-3, D-4, D-5, D-6 and D-7 in evidence.)

MR. MATTHEWS: I wish to offer Exhibit D-8 for identification, which is the records of those gentlemen because there was some discussion that the record on the back of

the card showed the same individuals in the photos just offered.

MR. ERNST: I take it that this offer is also made on the theory that a car was picked up and that this might be some proof that the suspicion in connection with the search of the car and the pick-up of the car may be well founded.

MR. MATTHEWS: It is offered, your Honor please, as I say——

THE COURT: Well, I imagine—it doesn't seem necessary to elaborate the point—I imagine the police in all cities of the country search cars occasionally for criminals.

MR. ERNST: I want to make plain there is no imputation here or implication that these records are in any way related to the parties plaintiff.

THE COURT: Oh, I don't think there was any such assertion.

MR. ERNST: All right, then, no objection.

(Received and marked Exhibit D-8 in evidence.)

MR. MATTHEWS: We also offer D-9, which is a picture of Congressman O'Connell. The subscription was read into the record, "Congressman Jerry O'Connell with Communist Herbert Benjamin and Socialist David Lasser conferring on possible action against Mayor Hague of New Jersey."

MR. ERNST: I take it that this offer in evidence is made on the basis that Mayor Hague saw that piece of paper and relied on it. No objection.

(Received and marked D-9 in evidence.)

MR. MATTHEWS: D-10 is the Garland Fund report from the library.

MR. ERNST: No objection.

(Received and marked Exhibit D-10 in evidence.)

MR. MATTHEWS: D-11 is offered——

MR. ERNST: I take it that that document also is being offered also only on the ground that it came to the knowledge of Frank Hague and that he used it in the same way to make up his mind.

MR. MATTHEWS: D-11 is offered for the ownership in 1932 and management of the New Masses, and your Honor gave us permission to photostat it. That is the section.

MR. ERNST: This, I take it, is not offered in any way as proof of anything other than the fact that these pages came before the eyes of Frank Hague and that he read them, and that he testified that he as a result made up his mind in certain respects; is that right?

MR. MATTHEWS: The ownership of the New Masses is there.

MR. ERNST: No, no, don't let's start that stuff.

MR. MATTHEWS: No, I object to that statement.

MR. ERNST: Well, I asked you a civil question.

MR. MATTHEWS: I have answered you civilly, that it is——

MR. ERNST: And I want a ruling.

THE COURT: I am frank to say that while counsel were exchanging questions among themselves I didn't hear that.

MR. ERNST: Your Honor please, there is an offer in evidence here, I made the statement that I had no objection if I understood that these photostats were being offered in evidence, not as proof of the truth of what is in the article at all but merely for the purpose of indicating that these pages came before the eyes of one Frank Hague; and that he testified as a result they helped him to form a judgment.

MR. MATTHEWS: They were offered to prove an affidavit that is written right in the pages, your Honor please.

MR. ERNST: Oh!

MR. MATTHEWS: An affidavit of ownership of the New Masses at that time.

MR. ERNST: I object to the introduction, if it is for any such purpose.

THE COURT: What is the purpose of it, Mr. Matthews?

MR. MATTHEWS: Your Honor recalls that there was an affidavit down in the lower corner, you know, as to the purchase of the New Masses by the Garland Fund in 1932, or the ownership in 1932 by the Garland Fund, and the names of the owners were on it.

THE COURT: Yes; there was an affidavit, I remember.

MR. MATTHEWS: Yes.

THE COURT: The ordinary ownership affidavit.

MR. MATTHEWS: Yes, your Honor. That is what that is offered for.

MR. ERNST: I object, your Honor. In the first place, there is no relationship between the Garland Fund and the record, and the parties plaintiffs, or anything in relation thereto. In the second place, the way to prove an ownership is not through that method. Now, what happened was these documents were presented to the Mayor, in order to get into the record the material upon which he made up his mind; and I must object to the introduction of any of this material, leaving any implication whatsoever that there is a word of truth conceded in any one of these documents.

MR. MATTHEWS: That was an added feature——

THE COURT: I think that is understood; of course, that isn't proof of ownership, as you know, Mr. Matthews.

MR. MATTHEWS: No, if your Honor wants to accept it, please, on the ground that Mayor Hague was conversant with that fact——

THE COURT: That is right.

MR. MATTHEWS: —all right.

(Received and marked Exhibit D-11 in evidence.)

MR. MATTHEWS: This D-14 pamphlet is offered, only in the places marked in the record, and only for the purpose of influencing the Mayor's state of mind.

MR. ERNST: No objection.

(Received and marked Exhibit D-14 in evidence.)

MR. MATTHEWS: The *Newark News* clipping or sheet of November 23, 1937, for the same purpose.

MR. ERNST: No objection.

(Received and marked Exhibit D-15 in evidence.)

MR. MATTHEWS: The picture of Mr. Thomas, as the subscription says, giving a Communist salute, for the same purpose.

MR. ERNST: The purpose being that Mayor Hague saw the paper——

MR. MATTHEWS: That it influenced Mayor Hague to refuse——

MR. ERNST: No, Mayor Hague saw the picture.

MR. MATTHEWS: Yes.

MR. ERNST: And used it as part of the basis for determining his mind.

MR. MATTHEWS: Yes.

(Received and marked Exhibit D-16 in evidence.)

MR. MATTHEWS: Now, there are a series of newspaper clippings, running from 17 to 26 inclusive, which are the ones that I had the last time, photostated, and they are clippings of 1937, which show allegedly in the clippings a con-

nection between CIO and radicalism, but Mayor Hague said he had read those and from reading those they formed his mind in his preventing the invasion of Jersey City by the CIO.

MR. ERNST: Were these identified?

MR. MATTHEWS: Yes.

MR. ERNST: Marked for identification?

MR. MATTHEWS: Yes, every single one.

MR. O'MARA: Marked singly, Mr. Ernst, from 17 through 26, inclusive.

MR. ERNST: No objection, if it is on the sole basis that they came to his attention.

MR. MATTHEWS: Now, there is a copy of a writ of mandamus and a return in the case of Thomas v. Casey. The return has been drafted and will be in final form this afternoon, and that is offered in evidence in this case.

MR. HERSHENSTEIN: That will be marked what?

THE CLERK: D-17 to D-26 are now in evidence.

(Documents referred to received in evidence as D-17 to D-26, inclusive.)

MR. HERSHENSTEIN: And we are offering a copy of a writ and a return now. What numbers will they take?

THE CLERK: New exhibits?

MR. HERSHENSTEIN: Yes. If they may be considered as marked in evidence now, we will give the Court and counsel a copy.

MR. ERNST: I would like to see the exhibits before they go in evidence. You can bring them in this afternoon.

MR. HERSHENSTEIN: I will be glad to give Mr. Ernst a copy.

MR. ERNST: If your Honor please, there is an offer now being made. Maybe Mr. Matthews would like to repeat it.

MR. MATTHEWS: I would like to read it, because it is a new exhibit to me and I want to read it correctly; a copy of the writ of mandamus and the return thereto in the case of Thomas v. Casey. The return has been drafted, Mr. O'Mara says, and will be in final form by this afternoon. We ask your Honor to accept it, the draft of the return, now, as an exhibit, or whichever way your Honor wishes to leave that.

MR. ERNST: Your Honor, I would like to object on the ground it is entirely immaterial.

THE COURT: Well, I am not sure that it is material, but that ought to develop in the legal argument, I should think.

MR. ERNST: Oh. You mean when the documents are brought forward?

THE COURT: No, on the legal argument of the case.

MR. ERNST: I see. I would like an exception to your Honor's ruling on the admission.

(Which exception is allowed and sealed accordingly.)

(Seal)

THE CLERK: They will be marked D-28 and D-29.

MR. MATTHEWS: The defense rests.

MR. ERNST: May we have about five minutes' adjournment?

THE COURT: Do I understand from that, when you say the defense rests, Mr. Matthews, that you don't intend to offer, if I should rule in your favor on the question of the subpœnas——

MR. MATTHEWS: If you should rule in our favor today on the question of the subpœnas, we would like to have the documents and offer them in evidence.

THE COURT: Well, that is what I meant to inquire.

MR. ERNST: Which documents?

MR. MATTHEWS: Well, we would like to look at them first and see.

MR. ERNST: If your Honor please, may I indicate that the law is clear that on a subpœna duces tecum the party subpœnaing has no right to look through the documents in any event, to find out which ones to offer. They must be presented to the Judge first, as I understand the practice, in all jurisdictions. The question then is passed on by the Judge, as to the materiality of any particular document.

MR. MATTHEWS: Well, we will meet that, if that is the law, by saying we will accept the documents subpœnaed and offer them in evidence as are.

MR. ERNST: May we have an adjournment, your Honor, for about five minutes?

THE COURT: Yes.

MR. ERNST: We had understood that there would be all kinds of motions today and forty-eight hours were needed for motions to dismiss, et cetera. I would like to take just about five minutes to decide whether we want to go on with some more evidence.

MR. MATTHEWS: May I just say there that my associates informed me, while I was in the law library, that they had notified Mr. Ernst that the motion to dismiss would not be made. Mr. O'Mara called me later and told me he had notified your Honor.

MR. ERNST: That is perfectly true.

THE COURT: Yes.

MR. ERNST: Perfectly true.

THE COURT: Yes, I knew about it.

MR. ERNST: So we are somewhat unprepared today by the position taken by the counsel for the defense that they will put on no witnesses.

MR. MATTHEWS: We will accommodate him for any adjournment he wants.

MR. ERNST: And I would like a few moments. There were statements made in the press that there would be a day or two taken, I was told, by witnesses. So I would like ten minutes.

THE COURT: Certainly. Mr. Matthews, may I see the amended pleadings now?

MR. MATTHEWS: May I say this, your Honor, that if my will had not been followed, it would have been three days. I have closed the case, since I am responsible for its trial, and my associates finally agreed with me, at midnight, last night.

MR. ERNST: If I may have ten minutes.

THE COURT: Oh, certainly, any time you want.

(Short recess.)

MR. ERNST: Your Honor please, you will recall that we had on the stand a Miss Opitz with respect to testimony as to a meeting in Newark. We understood your ruling that that testimony was not properly to be introduced at that time but might come up as a matter of rebuttal. We now, just to have the record complete, would like to get a ruling from the Court in view of the fact that no defense has been put in, as to whether that testimony would now be proper as rebuttal. I would be less than frank with the Court if I did not indicate that there is nothing to rebut on it, but I want to have the record clear that we want to again put on the stand Miss Opitz and the group that met in Newark along the lines we indicated in the testimony.

THE COURT: As I remember it, there were no questions asked, were there, with respect to a connection or any alleged connection of the Newark meeting.

MR. ERNST: There were questions asked but they weren't allowed, as I recall it,—Mr. Matthews can confirm it.

THE COURT: No, no, I don't think there were any questions asked by anybody.

MR. MATTHEWS: No questions asked.

MR. ERNST: No, no questions actually asked of Miss Opitz.

THE COURT: No, I mean any questions asked of any of the other witnesses.

MR. ERNST: No, there weren't.

THE COURT: My view at the time was that if those questions were asked and there had been a denial of it, that then perhaps Miss Opitz's testimony would have been relevant, otherwise not. So I don't believe it is relevant and you may have an exception.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

(Discussion.)

CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

INDEX.

	Vol. 1 Page
Docket Entries	1
Bill of Complaint	4
Schedule "A": Public Notice	21
Schedule "B": An Ordinance	22
Schedule "C": Notice to All Workers in Hudson County	23
Schedule "D": Letter to William J. Carney, Dated December 20, 1937	25
Schedule "E": Public Notice as to Public Peace, etc.	26
Schedule "F":	
Letter to Daniel J. Casey, Dated December 17, 1937	27
Letter to Samuel L. Rothbard, Dated December 20, 1937	29
Letter to Daniel J. Casey, Dated December 20, 1937	30
Letter to Samuel L. Rothbard, Dated December 22, 1937	32
Letter to Daniel J. Casey, Dated December 23, 1938	33
Letter to Spaulding Frazer, Dated December 27, 1937	34
Letter to Daniel Casey, Dated December 28, 1937	35
Letter to Spaulding Frazer, Dated December 30, 1937	38
Letter to Daniel Casey, Dated December 27, 1937	39
Resolution Adopted by Veteran Organizations, Dated December 28, 1937	41
Letter to Daniel J. Casey, Dated January 3, 1938	45
Subpœna ad Respond	47
Notice of Motion for Bill of Particulars	48
Motion for Bill of Particulars	49
Order Requiring Bill of Particulars	53
Proof of Service	54
Bill of Particulars	55
Answer of Frank Hague, Daniel J. Casey, Harry Walsh and The Board of Commissioners of Jersey City	56
Amendment by Way of Supplement	61
Affidavit of Morris L. Ernst	62
Amendment to Defendants' Answer	69
Further Amendment to Defendants' Answer	71
Opinion, Clark, D. J.	72
Discussion	132
Objections to the Form of Proposed Decree	139

	Vol. I Page
Comments and Objections to Findings of Fact Submitted by Plaintiff	141
Objections and Comments to the Proposed Conclusions of Law	145
Findings of Fact and Conclusions of Law	146
Final Judgment and Decree	155
Notice of Appeal	159
Proceedings at Trial	160
Daniel J. Foley—	
Direct Examination	172
Cross-Examination	191
Re-Direct Examination	205
Re-Cross-Examination	205
Cross-Examination	209
David L. Clendennin—	
Direct Examination	213
Cross-Examination	237
David Silverstein—	
Direct Examination	245
Cross-Examination	268
James P. Sweeney—	
Direct Examination	284
Cross-Examination	306
Nancy Cox—	
Direct Examination	309
Cross-Examination	341
Jules Nydes—	
Direct Examination	343
Cross-Examination	350
Aaron Gilmartin—	
Direct Examination	357
Cross-Examination	366
Re-Direct Examination	372
Harry Arons—	
Direct Examination	373
Cross-Examination	376
Bella Kussy—	
Direct Examination	381
Cross-Examination	385

INDEX—Continued.

	Vol. I Page
Sol Chernofsky—	
Direct Examination	388
Cross-Examination	396
Morris Milgram—	
Direct Examination	402
Cross-Examination	411
Grace Milgram—	
Direct Examination	415
Cross-Examination	418
Re-Direct Examination	420
Morris Milgram (Recalled)—	
Direct Examination	421
Cross-Examination	422
Frances McKee—	
Direct Examination	429
Cross-Examination	435
Mildred Cox—	
Direct Examination	439
Cross-Examination	441
Ashley Carrick—	
Direct Examination	443
Cross-Examination	445
William C. Kernan—	
Direct Examination	447
Cross-Examination	450
Ashley Carrick (Recalled)—	
Cross-Examination	450
Re-Direct Examination	451
Timothy O'Brien—	
Direct Examination	454
Cross-Examination	465
Joseph Zarrella—	
Direct Examination	472
Cross-Examination	477
William Callahan—	
Direct Examination	478
Cross-Examination	481

INDEX—Continued.

Vol. I
Page

Francis Hunter—
Direct Examination 482
Joseph Zarrella (Recalled)—
Direct Examination 483
Francis Hunter (Resumed)—
Direct Examination 484
Cross-Examination 488
Thomas Hurley—
Direct Examination 494
Thomas Cometa—
Direct Examination 499
Cross-Examination 507
Joseph C. Glavin—
Direct Examination 514
Daniel Casey—
Direct Examination 529

Vol. II

Cross-Examination 790
Re-Direct Examination 838
Re-Cross-Examination 856
Mary Padla—
Direct Examination 858
Jean Palmieri—
Direct Examination 861
Lila Rocco—
Direct Examination 864
Grace Pecore—
Direct Examination 866
Cross-Examination 869
Dorothy Opitz—
Direct Examination 871
Charles C. Webber—
Direct Examination 878
Dorothy Opitz (Recalled)—
Direct Examination 880
Jeannette Kasen (Stipulated) 881

INDEX—Continued.

	Vol. II Page
Charles C. Webber (Resumed)—	
Direct Examination	884
Samuel Macri—	
Direct Examination	889
Cross-Examination	964
Re-Direct Examination	1012
Re-Cross-Examination	1018
Raymond Chasan—	
Direct Examination	1019
Frank Hague—	
Direct Examination	1030
	Vol. III
Cross-Examination	1395
Re-Direct Examination	1555
William Callahan—	
Direct Examination	1578

	VOL. IV Original	Print
Stenographer's minutes of hearing in D. C. U. S., District of New Jersey, May 26, 1938	83	83
Appearances	85	83
Colloquy	85	83
Statement by the Court re tentative decree	107	100
Proceedings in U. S. C. C. A., Third Circuit	108	101
Minute entry of hearing	108	101
Opinion, Biggs, J.	109	101
Appendix—Findings of fact and conclusions of law of trial court	141	128
Final judgment and decree of trial court	150	136
Ordinance of January 22, 1924	154	139
Ordinance of April 15, 1930	155	141
Dissenting opinion, Davis, J.	157	141
Judgment	185	164
Clerk's certificate	(omitted in printing)	186
Order allowing certiorari	187	165

INDEX TO EXHIBITS.

PLAINTIFFS' EXHIBITS.

Ex. No.	Description.	Offered Vol. I Page	Printed Vol. IV Page
1	Handbill	177	1
2	Stenographic Record	324	3
3	Stenographic Record	324	3
4	Leaflet	417	5
		Vol. III	
5	Card	1583	6
6	No Exhibit.		
		Vol. I	
7	Circular	457	7
8	Newspaper Picture From "Sunday News", May 8, 1938	476	8
		Vol. III	
9	Card	1583	..
		Vol. I	
10	Applications	539	9
11	Permit Granted for Street Meetings, Religious	539	9
		Vol. II	
12	Correspondence, Rothbard and Casey	687	9
13	Letters, Frazer and Casey	687	10
14	Form Used in Connection With Street Corner Permits	787	12
15	Pawnbrokers' Descriptive Sheets	688	12
16	Telegram, Dated May 10, to Daniel Casey From J. Harlan Cleveland, and Attached Papers	688	13
17	Application, Telegraphic, by Wm. N. Callahan, Managing Editor of "The Catholic Worker"	605	15
18	12 Letters of Protest	684	17
19	8 Letters, Dated Prior to January 1, 1938, Protests	685	18
20	Batch of Additional Letters of Protest	685	20
21	Protest of Jersey City Real Estate Board, Dated December 30, 1937	685	21

INDEX TO EXHIBITS—Continued.

Ex. No.	Description.	Offered Vol. II Page	Printed Vol. IV Page
22	Resolution From Community Center, Dated December 30, 1937	686	21
23	Letter, American War Veterans of Italian Extraction, December 29, 1937	686	22
24	Letter of Protest From Hudson County Post No. 2	687	22
25	Two Undated Letters of Protest	687	22
26	Five Protests	691	23
27	Letter With Lynch Resolution	691	23
28	Letter, "A Citizen", May 21	692	..
29	Page From "Jersey Observer", May 7, 1938	720	25
30	Card With Name of Witness Casey	726	27
31	Correspondence Re Denials of Permits	788	29
32	Circular Containing President's Message	933	33
33	Notice, Dated December 28, 1937	1064	35
34	Postal Cards Re Meeting of Veterans	1064	35
35	Notice of Meeting of Veterans	1067	36
		Vol. III	
36	Correspondence Between Mr. Hamill and Mr. Frazer	1200	37
37	List of Jersey City Plants	1222	44
38	Anti-Placard Ordinance	1225	45
39	Page 5, "Newark Star-Eagle", June 11, 1938	1338	..
40	"Newark Sunday Call", November 21, 1937	1341	47
41	WOR Radio Speech	1557	..
42	Clipping "New York Times", December 27, 1937	1557	49
43	Clipping "Jersey Journal", January 13, 1938	1558	51
44	Page 9, "Jersey Journal"	1559	55
45	Clipping "Jersey Journal", January 7, 1938	1559	57
46	Statement of January 6, 1938, at Armory	1560	59
47	Statement of Mayor Hague	1564	..
48	Picture of a Meeting, 1929	1574	..

INDEX TO EXHIBITS—Continued.

DEFENDANTS' EXHIBITS.

Ex. No.	Description.	Offered Vol. III Page	Prin Vol. Pa
1	Clipping	1591	6
2	Clipping	1591	
3	Clipping	1591	
4	Clipping	1591	
5	Clipping	1591	6
6	Clipping	1591	6
7	Five Cards	1591	6
8	Bureau of Identification Cards	1591	6
9	Picture, Captioned "Jerry O'Connell With Communist Herbert Benjamin and Socialist David Lasser"	1592	6
10	Library Book Re Garland Fund	1592	5
11	Affidavit in the "New Masses"	1595	6
12	"Akron Times Press", May 27, 1938	1445	
13	"Akron Beacon Journal"	1446	
14	"American Republic Magazine" Re Dubinsky	1595	6
15	"Newark News", November 23, 1937, Item	1595	6
16	"Jersey Journal", Item of May 2, 1938	1595	6
17	Clipping "New York Times", May 24, 1937	1596	7
18	Clipping "New York American", March 9, 1937	1596	7
19	Clipping "New York Times", June 7, 1937	1596	7
20	Clipping "New York Times", March 29, 1937	1596	7
21	Clipping "New York Times", January 31, 1937	1596	7
22	Clipping "New York Times", January 15, 1937	1596	7
23	Clipping "New York Times", March 4, 1937	1596	7
24	Clipping "Herald Tribune", February 3, 1937	1596	7
25	Clipping "New York Times", April 24, 1937	1596	7
26	Clipping "New York Times", February 31, 1936	1596	7
27	Fish Report—Portions Identified	1590	7
28	Copy of Writ of Mandamus	1597	8
29	Copy of Return on Writ of Mandamus	1597	8

TO ALL WORKERS IN HUDSON COUNTY

Millions of workers all over the United States, with the help of the C. I. O., have ended their economic slavery and become free men and women again.

YOU CAN DO IT, TOO!

Here at last is the great chance for every worker in Hudson County – the biggest opportunity in your lifetime – the opportunity to organize for better wages, for security of your job, and for better life under the protection of a C. I. O. contract.

Don't forget! Your boss CANNOT PREVENT you from joining the C. I. O.

YOU CANNOT BE FIRED!

for joining a union. You have the legal right under the Wagner Labor Act, upheld by the Supreme Court of the United States, to choose your own labor union to represent you in collective bargaining.

ARE YOU — —

Satisfied with LOW WAGES
Contented with LONG HOURS
Working without PAID VACATIONS

?

NOW is the time to ACT!

Do You Want Shorter Hours, More Pay, Better Working Conditions and Paid Vacations **?**

It's Wise—Organize! Join the C. I. O!

Come to this Meeting and Find Out How

Friday, December 3—8 P. M.

PEOPLE'S CENTER

160 MERCER STREET, JERSEY CITY, N. J.

NATIONALLY KNOWN SPEAKERS

MICHAEL QUILL
President of the Transport Workers Union

HARRY WENDRICH
Representative, Printing Pressmen's Union

ALLEN HAYWOOD
C. I. O. Director for New York

WILLIAM J. CARNEY
C. I. O. Director for New Jersey

ADMISSION FREE!

PLAINTIFFS' EXHIBIT "P-2."

[Unofficial stenographic transcript of proceedings before Judge Botti in the First Criminal Court in the City of Jersey City on November 29, 1937, at the trial of Neil Brant, Jule Nydes, Fred Huszer, Joseph Kish, Joseph Mikolyk, Albert Pezzati, and Frank Degeranimo, charged with "Distribution of Circulars" on November 29, 1937. The Defendants were found guilty and sentenced to five (5) days in the County Jail. Judge Botti refused to swear a stenographer, who was a competent court reporter.]

PLAINTIFFS' EXHIBIT "P-3."

[Unofficial stenographic transcript of proceedings before Judge Botti in the First Criminal Court in the City of Jersey City on November 29, 1937, in the case entitled: State of New Jersey, Plaintiff vs. Dominick Spino, et al., Defendants; in which six persons, affiliated with the C. I. O. were charged with unlawful assembly on November 29, 1937, in connection with circular distribution, (circulars printed as Exhibit P-1) and held for the Grand Jury. Judge Botti refused to swear a stenographer, who was a competent court reporter.]

PLAINTIFFS' EXHIBIT "P-4."

5

SUPREME COURT BANS ANTI-LEAFLET LAWS

In a unanimous opinion delivered last Monday, the U.S. Supreme Court ruled that an ordinance requiring a license for leaflet distribution was:

> "invalid on its face. Whatever the motive which induced its adoption . . . it strikes at the very foundation of the freedom of the press . . . "

THIS MEANS THE JERSEY CITY ORDINANCE AS WELL AS SIMILAR ORDINANCES ALL OVER THE COUNTRY.

Repeating arguments advanced by the Workers Defense League in its "friend of the court" brief, the Supreme Court's decision said:

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly prove."

POLICE DEFY SUPREME COURT

Yesterday, March 29th, in accordance with the decision of the Supreme Court which rendered all anti-leaflet laws unconstitutional, attempts were made to distribute leaflets announcing a meeting at which Norman Thomas was to speak. The police illegally seized the leaflets from the girl distributor, and handled her roughly. One of the Workers Defense League observers who complained to the police officer about the way she was handled, was arrested and taken to the Montgomery St. Precinct where he was released by Captain Peter Quail.

Captain Quail told the Workers Defense League representative "We're enforcing the Jersey City ordinance, not the Constitution." Captain Quail further said that he had ordered the police to continue seizing leaflets from people who tried to distribute them.

THIS IS ANARCHY, NOT LAW AND ORDER

Such action by the police is anarchy, not law and order. The Workers Defense League of Hudson County pledges itself to see the end of police lawlessness in Jersey City.

Workers, as well as all other people, today and from now on have the unqualified right to distribute pamphlets and handbills in Jersey City. The Workers Defense League will help protect workers who exercise this unqualified right.

WORKERS DEFENSE LEAGUE OF HUDSON COUNTY
Darrell O'Neill, Secretary
716 Bergen Avenue
Jersey City, N.J.

PLAINTIFFS' EXHIBIT "P-5."

125 110 $1.25
125 (After 8.30) plate.

FAIRMOUNT HOTEL
JERSEY CITY, N. J.

WILLIAM K. MOSER
MANAGER

TELEPHONE
BERGEN 3-0962

PLAINTIFFS' EXHIBIT "P-7."

7

The Catholic Worker

EDMUND CAMPION was proscribed from England and had to live in exile. For nine years he studied abroad, preparing himself to be a priest. When at last he was ready to go back to help his oppressed people, he had to hide from the authorities and steal into the country in disguise.

Always working under cover, he had to encourage the people, organize them, and give them the Sacraments. In many places he escaped being caught just in time, only to reappear somewhere else, in disguise, but always with the same enthusiasm and energy.

When he was caught finally and going to the gallows to be hanged, he preached a last sermon with the halter already around his neck. He was even more cheerful than usual, and joked so much in his sermon that the people could not help laughing through their tears. The manner of his life and the manner of his death were wonderful examples to make the people understand his ardent convictions.

THE CATHOLIC WORKER, always an ardent champion of civil rights, protests mostvehemently the consistent violation of those rights in Jersey City. We deeply deplore the actions and statements of the Catholic War Veterans. We condemn most partily the framing of Jeff Burkitt and the unAmerican treatment, accorded Norman Thomas. Furthermore, we pledge ourselves to being in the fight to stay until Hagueism has disappeared and civil rights restored in Jersey City.

Issued by

THE CATHOLIC WORKER
115 Mott Street
New York City

PLAINTIFFS' EXHIBIT "P-9"

PATRIOTIC RALLY

Under the auspices of a Committee representing all the Civic, Veteran, Fraternal, Labor and Business Organizations in Jersey City.

You are invited with all your friends to attend a Monster Demonstration at the Jersey City Armory at 7:45 o'clock, Thursday evening, January 6, 1938, and by your presence register your endorsement of Mayor Frank Hague's attitude against the invasion of Jersey City by Communist agents and the noted Red Leaders of this Country.

Stand by Mayor Hague in his determination to keep out this un-American group, whose purpose is to destroy our Government of law and order and tear down our American institutions.

THIS IS YOUR FIGHT. Your presence is essential.

Help us make this an impressive demonstration. Whether you are inside or outside the Armory, please stay until the Rally is over.

ROBERT S. CARMICHAEL,
Chairman of Committee.

PLAINTIFFS' EXHIBIT "P-10."

For Identification.

(By agreement of counsel to be considered in evidence.)

[A compilation of permits granted for outdoor meetings in streets and public places in Jersey City from 1913 to 1938, containing several thousand permits for such meetings to various persons and organizations, including the Democratic Party, the Socialist Party, the Progressive Party, the Anti-Socialist Party, Progressive Democratic Party; Republican Party; Suffragettes; Progressive Republican Party; Brensinger, Fagen, Hague, Moore and O'Brien Campaign Committee; Citizens Labor Party; Hague Democratic Association; Socialist Labor Party; Communist Party. This compilation also indicates that two applications were denied—one being an application of the United Front Anti-War Committee dated August 1, 1932, and the other application of the Scottsboro Committee, dated August 26, 1933.]

PLAINTIFFS' EXHIBIT "P-11."

For Identification.

(By agreement of counsel to be considered in evidence.)

[This Exhibit contains a compilation of the permits for street meetings issued to various religious groups and associations from 1932 to 1938.]

PLAINTIFFS' EXHIBIT "P-12."

[Correspondence between Samuel L. Rothbard, on behalf of American Civil Liberties Union, and Daniel Casey, copies of which correspondence are annexed to Bill of Complaint and form a part of Schedule "F".]

PLAINTIFFS' EXHIBIT "P-13."

[Correspondence between Spaulding Frazer for Hudson Co. Organizing Committee of the C. I. O. and Daniel Casey, copies of which correspondence are annexed to Bill of Complaint and also form a part of Schedule "F".] Exhibit P-13, also includes a letter from Spaulding Frazer to Daniel Casey, dated January 3, 1938, as follows:

RECEIVED
Time 9.50 am
Date Jan. 4, 1938
DEPT. PUBLIC SAFETY
DIRECTOR'S OFFICE

SPAULDING FRAZER
744 Broad Street
Newark, New Jersey

January 3, 1938.

Honorable Daniel J. Casey,
Director of Public Safety,
Jersey City, New Jersey.

Dear Sir:

I wish to thank you for your very frank letter of December 30th. The fact that I received it the day after the last date for which permission was asked, was, as you doubtless thought, of no significance in view of your letter of December 27th, in which you informed us of your intended "investigation of all the facts and circumstances pertinent to" my application. With the passing of the meeting date, I had construed silence as dissent.

Your letter, however, is very illuminating as to the nature of the investigation undertaken by you. Such an investigation concededly takes time. Even a perfectly functioning organization requires at least one day to foment a mass-meeting. I congratulate you on the apparent success of the demonstration, if you consider the accomplishment important. I do not. It solves none of the problems confronting us, and as I see it, points with pride to the apparent

inability of Jersey City authorities, with the largest per capita police force in the country at their disposal, to maintain order against the threatened mob violence of unruly elements who threaten direct action if the authorities protect, in the exercise of their constitutional rights, persons in whose opinions the mob does not concur.

The purpose of the proposed meeting was to petition your Commission (1) to modify certain city ordinances, and (2) to prevent owners of halls from intimidation by your police officers in the rental of their halls. That your supporters disagree with the opinions of Mr. Roger N. Baldwin, or the economic philosophy of the Committee for Industrial Organization seems beside the point. What seems, however, very important is that you, a public officer, sworn to enforce the law, should admit your incapacity to do so and your fear that should you attempt it "veterans" would turn Jersey City over to the mercies of a riotous mob. Nowhere do I see any statement that the applying petitioners or their supporters will be disorderly, but it is clear from the voluminous matter attached to your letter in justification and from the reports of the "mass-meeting" that the disorderly conduct feared would have been on the part of your supporters. Really, Mr. Commissioner, you should have them in better control. Your Mayor has recently spoken of his "efforts to obstruct this lawless element whose only effort is to crush by terrorism", and of a "campaign of violence and terrorism". Is it possible he had prophetically in mind the "mass-meeting" of Tuesday? Or is it that you tolerate mobs instructed to do your bidding and heroically suppress and oppress by public and private force all individuals who disagree with or oppose you? This, to my mind, is the issue involved, not what may be the opinions, philosophical or economic, of those who are brave enough in Jersey City to disagree with you, or shall I say more realistically, with Mayor Hague. On this issue I am ready to join with you.

Very truly yours,

SPAULDING FRAZER

PLAINTIFFS' EXHIBITS "P-14" AND "P-15."

[Certain permits for street meetings—some on a printed permit form—others of informal character.]

[redacted]

ANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

WESTERN UNION (33)

SYMBOLS
DL = Day Letter
NM = Night Message
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. [illegible], FIRST [illegible]

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of re[illegible] STANDARD TIME at point of destination.

Received at 79 Montgomery St., Jersey City, N. J.

RECEIVED
TIME [illegible] 10 [illegible]
May 10 [illegible] 38

NK56 37/43 1 EXTRA=PRINCETON NJ 10 1002A

DANIEL CASEY=

ROOM 27 CITY HALL JY=

DEPT. PUBLIC SAFETY
DIRECTOR'S OFFICE

WE REQUEST PERMIT FOR SPEECH BY SENATOR WILLIAM BORAH SPONSORED BY AMERICAN WHIG CLIOSOPHIC SOCIETY OF PRINCETON UNIVERSITY. DATE THURSDAY EVENING MAY 12 AT 9 PM JOURNAL SQUARE. PLEASE WIRE REPLY BY WESTERNUNION COLLECT AS SOON AS POSSIBLE TO WHIG HALL PRINCETON=.

J HARLAN CLEVELAND VICEPRESIDENT AMERICAN WHIG CLIOSOPHIC SOCIETY.

12 9 PM. THE QUICKEST, SUREST AND SAFEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE

May 10, 1938

Mr. J. Harlan Cleveland, Vice-President,
American Whig-Cliosophic Society
Princeton, New Jersey

Dear Sir:

I have your telegram in which you request a permit, I assume for an outdoor meeting, to be sponsored by your society for Thursday evening, May 12, 1938, at 9.00 p. m., at Journal Square, Jersey City.

I have made an investigation of the facts and circumstances pertinent to this application and believe it to be proper to refuse the issuance thereof. Your request for a permit therefore is denied on the ground that the said meeting would tend to create disturbance and disorderly assemblage.

Yours truly,

Director

PLAINTIFFS' EXHIBIT "P-17."

[A business card of William M. Callahan, Managing Editor of Catholic Worker and correspondence.]

RECEIVED
Time 3.00 pm.
Date Tues. May 3/38
DEPT. PUBLIC SAFETY
DIRECTOR'S OFFICE
May 3, 1938

Hon. Daniel Casey,
Comm. of Public Safety,
Jersey City, N. J.

Sir:

I hereby respectfully apply for a permit to hold an open air meeting in Journal Square at 7:30 P. M. on Friday, May 6th. Should there be any objection to my choice of place, Bergen Sq., where there is no traffic problem, would be acceptable.

Please consider this also as a request for either place at the same time on May 14th, both requests to be considered separately.

Thanking you in advance for your kind consideration, I remain

Respectfully,

WILLIAM M. CALLAHAN
William M. Callahan,
Managing Editor,
THE CATHOLIC WORKER
115 Mott St.,
N. Y. C.

P. S. The purpose of the meetings will be educational, explaining the Papal Encyclicals.

May 4, 1938

Mr. William Callahan,
Managing Editor,
The Catholic Worker,
115 Mott St., New York City.

Dear Sir:

Your application to hold an open air meeting in Jersey City on Friday evening, May 6th, received.

It is my wish that you present your application in person and list those who are to address the meeting; also supply me with a list, if any, of the officers or executives of the newspaper that you say you edit, so that I may investigate as to who you represent and as to the character of these speakers.

Very truly yours,

Daniel Casey,
Director.

PLAINTIFFS' EXHIBIT "P-18."

For Identification.

[Twelve (12) letters from Veterans, dated May 1938, all substantially identical, the following being a sample:]

Jersey City,
May 19–1938

Hon. Daniel Casey
Commissioner of Public Safety
Jersey City N. J.

Dear Sir:

Allow me as a World War Veteran to congratulate you on the methods you are using to combat the so called radical movement being launched in our city.

Be assured you have my heartiest support and co-operation in anything you do to keep Jersey City just as it is at the present time.

Respectfully

Harry Mariotta
Gen. Wheeler Post #62 V. F. W.

PLAINTIFFS' EXHIBIT "P-19."

For Identification.

[Communications sent to the Mayor of Jersey City from the following:

Jersey City Real Estate Board, dated Dec. 15, 1937, approving the action taken by Mayor Hague and the Commissioners of Jersey City in their handling of conditions arising from the C. I. O. and Communist Party controversy in Jersey City and requesting that the Mayor and Commissioners continue their protective measures.

Ladies of the Grand Army of the Republic, dated December 16, 1937, supporting the Mayor in his work against Communism.

Associated Sons of Poland, dated Dec. 31, 1937, Association approving the stand taken by the Chamber of Commerce against all subversive and Communistic movements.

Jersey City Chamber of Commerce, dated Dec. 23, 1937 which decided to go on record in the Labor controversy involving Jersey City, and expressing its opposition to elements from the outside whose manifest purpose is to illegally disturb, hamper and destroy the peaceful relations which exist in the local industrial life of Jersey City, and approving the conduct of Mayor Hague in forcefully and courageously resisting them.

Catholic War Veterans, dated Dec. 22, 1937, approving the stand of Mayor Hague against Radicals. to which resolutions were annexed.

Jersey City Lions' Club, dated Dec. 16, 1937, submitting a resolution reciting the criticism by non-residents of New Jersey of Mayor Hague and the City Administration for their attitude toward certain so-

called labor organizations, stating that the labor situation is a local matter; that the Club feels that Mayor Hague and the City Commissioners are endeavoring to prevent disorder and forestall riots and lawlessness, whereupon it is resolved that the Lions' Club express its confidence in Mayor Hague and the City Commissioners to handle the situation in fairness to all concerned without interference by non-residents.

Jersey City Post No. 37, dated Dec. 16, 1937, offering to lend its assistance in supporting the Mayor in his organized fight against Communism, and his determination to keep the exploitation of Communism out of Jersey City.

Desmond Post No. 172 (undated) which passed a resolution offering to support the governing officials of Jersey City in their refusal to permit any person or persons to conduct meetings of any kind, when such person or persons have given succor to known Communists who have preached and spread Communistic doctrines and who, by such actions have been "un-American".

PLAINTIFFS' EXHIBIT "P-20."

For Identification.

[A batch of protests including a typewritten petition, a copy of which is printed below, to which 158 separate sheets have been stapled, each of the said 158 sheets are partially or completely filled upon one side with signatures of various individuals, and in one or two instances also have signatures on the reverse side of the sheet, containing in all several thousand signatures.]

"To: The Honorable Daniel Casey
Director of Public Safety of the City of Jersey City.

Sir:

We, the undersigned, Veterans of the World War and the Spanish-American War, are informed through the public press that there has been presented to you a request or application for leave to hold an outdoor meeting at Journal Square, Jersey City, New Jersey, on Saturday, April 30, 1938.

We vigorously protest against the granting by you of permission to hold this meeting, or any future meetings of a similar nature at Journal Square.

In 1898 and 1917 we left our homes and loved ones and offered our lives for the preservation of our Government and its institutions. Every right is therefore ours to uphold the principles for which we fought. We heartily support and defend the principles of free speech and public assemblage but we most vigorously oppose the abuse of such rights as a cloak for radicalism supported by professional agitators whose purposes are contrary to American principles of good government and whose methods lead to public disorder and breaches of the peace.

This was fully demonstrated a short time ago when an attempt was made to hold a public meeting at Jour-

nal Square without a permit. The facts and circumstances concerning the disorder thus created have been fully mentioned in the public press and need not be repeated here.

At this time groups of people such as these can serve no useful purpose by their assemblage. There is no political contest pending in Jersey City, nor is there any matter to be placed before the people concerning its government.

We, who have pledged ourselves to uphold and defend the Constitutions of the United States of America and the State of New Jersey, and to carry on in time of peace as we did in time of war, respectfully request that this and future applications of this kind be denied."

PLAINTIFFS' EXHIBIT "P-21."

For Identification.

[Letter of Jersey City Real Estate Board, dated December 30, 1937, approving Mayor Hague's stand and promising attendance at Rally at Jersey City Armory on January 6, 1938.]

PLAINTIFFS' EXHIBIT "P-22."

For Identification.

[Resolution by the Italian Community Center to attend the protest meeting at the Armory on January 6, 1938, and endorse Mayor Hague's stand.]

PLAINTIFFS' EXHIBIT "P-23."

For Identification.

[Letter dated December 29, 1937, from American War Veterans of Italian extraction, commending the Mayor on his policy of keeping the Communists out.]

PLAINTIFFS' EXHIBIT "P-24."

For Identification.

[Undated letter from Hudson County Post No. 2 of the 29th Division Association of Jersey City, urging that the Radicals be kept out.]

PLAINTIFF'S EXHIBIT "P-25."

For Identification.

[Resolution of Grand Jury Association of Hudson County: "That the brave stand of Honorable Frank Hague, Mayor of Jersey City, in upholding the Constitution guaranteeing freedom and liberty to the people is commended and endorsed."]

PLAINTIFFS' EXHIBIT "P-26."

For Identification.

[A number of additional protests, one of which is in the form of a resolution signed by Hugh A. Kelly, as Chairman of the Veterans' Law and Order Committee, which is stated to have met May 19, 1938, and which requests that for the present no permits be granted to any person, organization, body or association of known anti-American tendencies or vain-glory seekers to hold public meetings in the public streets, parks or public buildings in Jersey City. "This request is made with full knowledge of the ability of the Jersey City Police Department to properly handle any public disturbances; but we do suggest that prevention of trouble is better than quelling it after it is started."]

PLAINTIFFS' EXHIBIT "P-27."

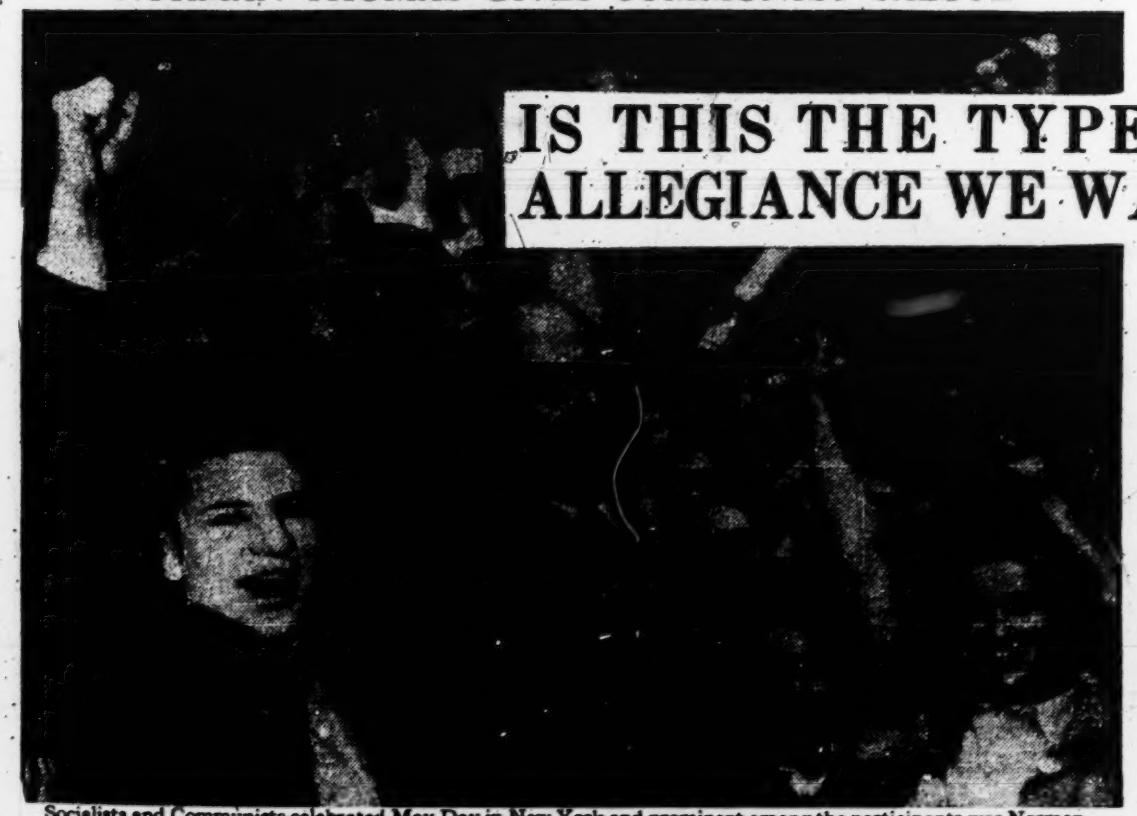
For identification.

[Letter from the Hudson County Building and Construction Trade Council, dated May 4, 1938, enclosing resolution approving the action of the Mayor and City Commissioners in "refusing a permit for and preventing the meetings of any of these Radical and Communistic groups".]

VETERANS ATTEN

NORMAN THOMAS GIVES COMMUNIST SALUTE

IS THIS THE TYPE OF ALLEGIANCE WE WANT?

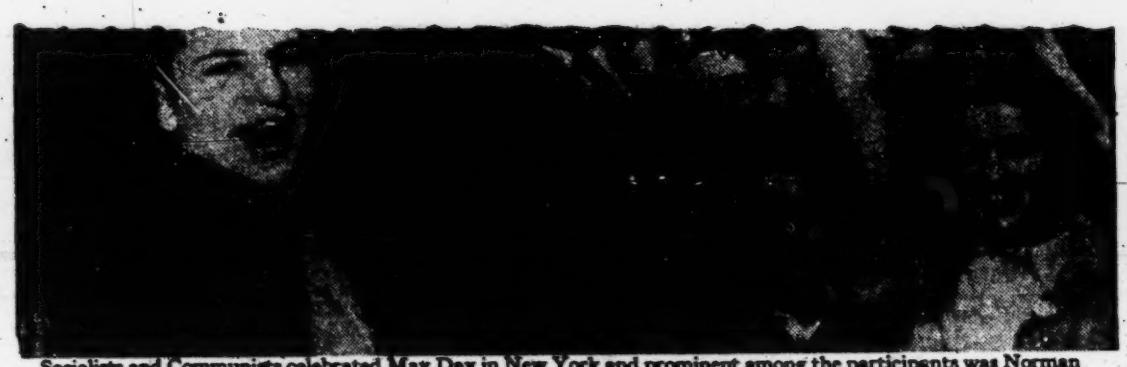


Socialists and Communists celebrated May Day in New York and prominent among the participants was Norman Thomas, a Socialist leader, who is shown (center) giving the Communist clenched fist salute and singing the "Internationale" along with the other Reds and Pinks surrounding him.

OR THIS?

AT OUR PROTEST MEETING HELD THURSDAY NIGHT AT IT WAS RESOLVED:--

That the veterans of this city call upon all of the citizens of Jersey City to prese on Saturday night in an orderly manner, carrying an American Flag, to show ence their support of the Mayor and officials of Jersey City, the Gold Star Mo War Mothers and Veterans of their efforts to keep the Reds who have destroyed s



Socialists and Communists celebrated May Day in New York and prominent among the participants was Norman Thomas, a Socialist leader, who is shown (center) giving the Communist clenched fist salute and singing the "Internationale" along with the other Reds and Pinks surrounding him.

AT OUR PROTEST MEETING HELD THURSDAY NIGHT AT TH

IT WAS RESOLVED:--

That the veterans of this city call upon all of the citizens of Jersey City to present the on Saturday night in an orderly manner, carrying an American Flag, to show by the ence their support of the Mayor and officials of Jersey City, the Gold Star Mothers a War Mothers and Veterans of their efforts to keep the Reds who have destroyed so man cities in this country from invading Jersey City. We will thus show to the world our tion that in Jersey City there is room for only one flag, the American Flag, and for o doctrine, the American Doctrine. We will further show to the imported gathering c haired Reds from New York and elsewhere out of this State that their presence is not and will not be tolerated in Jersey City.

Show your Americanism onight and be present . . . . American Flags will be distributed at Journal Square

A MESSAGE TO ALL WORKI

At a Protest Meeting held last night at Odd Fellows Hall (Lawyers The American Federation of Labor, Condemned the tactics of Comm

¶ At a Protest Meeting held last night at Odd Fellows Hall (Lafayette) The American Federation of Labor, Condemned the tactics of Comm attempting to invade Jersey City. You are urged to read the followi

WHEREAS, The working people of Jersey City are very deeply concerned with the efforts of Mayor Frank Hague to protect our city against the persistent attempts at invasion that have been made by Roger Baldwin, Norman Thomas and other leaders of the Red elements in the C.I.O. and other anti-American Communist groups, and

WHEREAS, The working people in this city wish to continue to lead peaceful and contented lives and to pursue their various occupations without molestation or interference from anyone, and

WHEREAS, By our action in calling this joint protest meeting, we are endeavoring to demonstrate our loyalty, to the principles of Americanism and our interest in the preservation of the rights of the working people of our city, which Mayor Hague so ably defends, and

WHEREAS, The Workers Defense League and other radical groups have publicly expressed their determination to hold a mass meeting at Journal Square, in Jersey City, on next Saturday evening, May 7th, in deliberate and forceful violation of existing law, and

WHEREAS, It is announced that one Jerry O'Connell, a Congressman and a leader of the C.I.O. and other radical and Communist elements, will speak at the aforesaid illegally scheduled meeting, and

WHEREAS, It is the unanimous opinion of the members of the Central Labor Union of Hudson County and the Hudson County Building Construction Trades, and their various affiliated unions of the American Federation of Labor, that it is injurious to the cause of organized labor and to the principle[s] permit Red meetings of this characte[r] Communists and other Reds from ot[her] public streets of this city; therefore,

RESOLVED, That the Director of Publi[c] mediately notified that the member[s] assembled and represented do strenu[ously] proposed meeting on May 7th, and character, upon the public streets o[f] it further,

RESOLVED, That all the members of t[he] or represented will present themsel[ves] May 7th, at Journal Square, at 7.[30] personal and public protest agains[t] meeting and that each person so p[re]sent as a symbol to the country and in p[ro]test of Reds, Communists and radicals, [to] of the American system of governm[ent] tactics will not be tolerated and w[ill] be it further

RESOLVED, That the members of th[e] sembled or represented call upon al[l] abiding peop[le] of Jersey City to [a]ssemble Square next Saturday evening, to [e]xpress ized labor and of the efforts of Ma[yor] and Communist elements out of th[e] the American standards of law and [or]der

Paid for by:

CEN[TRAL]
CON[STRUCTION]
LOC[AL]

Friends of Organized Labor assemble with us tonight at Journal Square at 7.30 P. M.

NS ATTENTION!!

TE

TYPE OF
VE WANT?

vas Norman
singing the

OR THIS?

G HELD THURSDAY NIGHT AT THE ARMORY

is city call upon all of the citizens of Jersey City to present themselves
n orderly manner, carrying an American Flag, to show by their pres-
ie Mayor and officials of Jersey City, the Gold Star Mothers and the
ans of their efforts to keep the Reds who have destroyed so many other
om invading Jersey City. We will thus show to the world our convic-

rman
g the

HELD THURSDAY NIGHT AT THE ARMORY

ity call upon all of the citizens of Jersey City to present themselves
orderly manner, carrying an American Flag, to show by their pres-
Mayor and officials of Jersey City, the Gold Star Mothers and the
of their efforts to keep the Reds who have destroyed so many other
invading Jersey City. We will thus show to the world our convic-
ere is room for only one flag, the American Flag, and for only one
octrine. We will further show to the imported gathering of long-
k and elsewhere out of this State that their presence is not wanted
n Jersey City.

Paid for by:
VETERANS COMMITTEE FOR LAW AND ORDER.

TO ALL WORKING MEN and WOMEN

t night at Odd Fellows Hall (Lawyers Building, Jersey City)
abor, Condemned the tactics of Communists and other Reds
ity. You are urged to read the following adopted resolution:

very deeply con-
protect our city
have been made
aders of the Red

organized labor and to the principles of American Government to permit Red meetings of this character, sponsored and addressed by Communists and other Reds from other states, to be held upon the public streets of this city: therefore, be it

eld last night at Odd Fellows Hall (Lawyers Building, Jersey City) n of Labor, Condemned the tactics of Communists and other Reds rsey City. You are urged to read the following adopted resolution:

y City are very deeply con-
k Hague to protect our city
vasion that have been made
and other leaders of the Red
merican Communist groups,

ity wish to continue to lead
sue their various occupations
m anyone, and

is joint protest meeting, we
loyalty to the principles of
preservation of the rights of
Mayor Hague so ably defends,

e and other radical groups
nation to hold a mass meet-
, on next Saturday evening,
iolation of existing law, and

y O'Connell, a Congressman
radical and Communist ele-
gally scheduled meeting, and

f the members of the Central
he Hudson County Building
ous affiliated unions of the
t is injurious to the cause of

th
M.

organized labor and to the principles of American Government to permit Red meetings of this character, sponsored and addressed by Communists and other Reds from other states, to be held upon the public s' eets of this city; therefore, be it

RESOLVED, That the Director of Public Safety of Jersey City be immediately notified that the membership of the organizations here assembled and represented do strenuously oppose the holding of the proposed meeting on May 7th, and any future meetings of a like character, upon the public streets or places of Jersey City and, be it further,

RESOLVED, That all the members of the organizations here assembled or represented will present themselves on next Saturday evening, May 7th, at Journal Square, at 7.30 P.M., to register a vigorous personal and public protest against the holding of this proposed meeting and that each person so present carry an American Flag as a symbol to the country and in particular, to the fanatical groups of Reds, Communists and radicals, whose purpose is the destruction of the American system of government, that in Jersey City such tactics will not be tolerated and will be resisted to the end; and, be it further

RESOLVED, That the members of the various organizations here assembled or represented call upon all of their friends and all the law-abiding people of Jersey City to present themselves at Journal Square next Saturday evening, to evidence their support of organized labor and of the efforts of Mayor Hague to keep these radical and Communist elements out of the city and to preserve in our city the American standards of law and order.

Paid for by:

CENTRAL LABOR UNION, BUILDING AND CONSTRUCTION TRADES, AND AFFILIATED LOCALS OF AMERICAN FEDERATION OF LABOR.

This is the month of Patrick, saint,
Who legend says, did leave no taint
Of snakes or other things that crawl
In that green land of Tara's Hall.
Behind the wheels of many cars
Are humans, who outstrip by far
The menace of the earthbound snake,
Who street and highway dangerous make.
To curb this maniac of the road
To lighten Death's so heavy load
The Safety League does, and will,
Teach a man to drive—not kill!

JERSEY CITY POLICE DEPARTMENT SAFETY LEAGUE

UNIT NO. 4

LINCOLN HIGH SCHOOL
Crescent and Harrison Avenues

FRIDAY, MARCH 4th, AT 8 P. M.

New Motion Pictures Songs Music

DEPARTMENT OF PUBLIC SAFETY GLEE CLUB AND ORCHESTRA

FRANK HAGUE
Mayor

4

DANIEL CASEY
Director of Public Safety

PLAINTIFFS' EXHIBIT "P-31."

[Folder containing the following 1938 applications for open air meeting permits and the Casey denials:

James Burkitt and Vincent Feno of the Longo Defense Committee submitted an application for a meeting at Journal Square, April 16, 1938, at 8:30 P. M.; denied April 14, 1938, "for the reason that investigation discloses such meeting would tend to result in disorder".

Two applications by Burkitt dated April 19, 1938, for meetings at Journal Square and at Bergen Square on April 23, 1938; denied on April 22nd for the same reason.

April 22, 1938, William Tallman, on behalf of Socialist Party and Norman Thomas, requested permit for Journal Square for the evening of April 30, 1938; denied April 27th, "on the ground that said meeting might tend to result in disorder and disturbance".

May 3, 1938, application by Hudson County Committee for Labor Defense and Civil Rights for evening of May 7, 1938. By letter dated May 4th, Casey requested a list of the speakers and the names and addresses of the officers of the association. On May 6th, Casey in denying the permit wrote "The speakers whom you list, namely, Congressman Jerry J. O'Connell and John T. Bernard, are personally obnoxious to the great majority of our citizens because of their Communistic endeavors. There has been considerable agitation by veterans and labor organizations, War Mothers and Gold Star Mothers and other civil groups in our city as the result of the announcement in the press that they were to appear here to speak".

On May 3, 1938, the Socialist Labor Party applied for a permit on May 14th at Lincoln and Central Avenues, and for May 21st at Orient and Jackson Avenues. On May 4, 1938, Casey wrote asking that Mr. Nicol Herold present the application personally and list the speakers who were to address the meeting and also furnish a list of the officers of

the Socialist Labor Party. After this information was furnished, the application was denied.

May 9, 1938, application by Independent Speakers Association for either May 19th or May 20th at Journal Square; denied by Casey on May 10, 1938.

Norman Thomas applications: dated April 27, 1938, for April 30, 1938; denied April 28th.

May 9th for May 17th or May 24th; denied May 10th.

May 17th, in which Thomas applied for a place other than Journal Square; denied by letter of May 20th, 1938.

Application by Hudson County Committee for Labor Defense and Civil Rights for meeting in Pershing Field, May 27th, to be addressed by Representative O'Connell, and Containing this statement: "We are especially asking for Pershing Field as a place which will not interfere with the trade of our townspeople. As an organization composed of Hudson County groups, we are solicitous of the business and welfare of Jersey City". Denied by letter May 25th, which refers to Congressmen O'Connell and Bernard's tour of Spain as guests of the Communist Party. It stated "Knowing that the C. I. O. has been prevented from gaining a foothold in Jersey City, Mr. O'Connell comes to their aid by raising the claim of denial of free speech, and by his every act is seeking to pave the way for the C. I. O. and their destructive forces entering our city". Casey then denies the application referring to Marcantonio and the International Labor Defense which is "part and parcel of the Communist Society known as the 'Red Aid of Russia', which has established branches all over this country".]

This Exhibit also includes the following permits granted:—

[Permits granted Miss Ellen Tracy for a parade on March 5, 1938 by War Mothers carrying banners outside the Jersey City Armory.

May 6th, on application of Hugh A. Kelly, Chairman Jersey City Veterans' Law and Order Committee, permit for parade from Armory to Veterans' Square granted, to be held May 7, 1938.

June 3, 1938, on application of Hugh A. Kelly, Chairman as aforesaid, permit for parade on June 6, 1938—granted.]

THE PRESIDENT *Says:*

"...(We must) also raise the purchasing power of that third of the nation which receives its income from industrial employment.

Millions of industrial workers receive pay so low that they have little buying power.

Aside from the undoubted fact that they thereby suffer great human hardship, they are unable to buy adequate food and shelter, to maintain health, or to buy their share of manufactured goods.

* * *

"I have spoken of labor as another essential in the three great groups of the population in raising the nation's income. Definite strides have been made and the right of labor to organize has been nationally recognized."

* * *

"For economic and social reasons our principal interest for the near future lies along two lines: FIRST, THE IMMEDIATE DESIRABILITY OF INCREASING THE WAGES OF THE LOWEST PAID GROUPS IN ALL INDUSTRY..."

(From President Roosevelt's message to Congress)

THE C. I. O. *Says:*

"The only way to support the President's program is for workers to join trade union organizations of their own choosing."

JOIN THE C. I. O!

Be Wise! ***Organize!***

I am interested in the C. I. O. and would like to have you send me more information.

Name

Address City

Factory

(All names and information will be held strictly confidential)

Mail to: **Committee for Industrial Organization**
17 William Street, Room 201
Newark, New Jersey

PLAINTIFFS' EXHIBIT "P-33."

Mr. Ernst:

This was sent to all City and County Department Heads.

DECEMBER 28, 1937.

IMPORTANT NOTICE

ALL VETERANS REPORT AT ARMORY TONIGHT, TUESDAY, DECEMBER 28TH AT EIGHT O'CLOCK (8:00) SHARP. THIS IS IMPORTANT.

MESSAGE FROM MAYOR'S OFFICE.

PLAINTIFFS' EXHIBIT "P-34."

Printed postal card from the Leaders of the 4th, 7th, and 8th Wards Democratic Clubs, Dated January 3, 1938, a sample of which is as follows:

SEVENTH WARD DEMOCRATIC CLUB (NORTH END)

EUGENE ERTLE, Leader

January 3, 1938.

Representatives of the Communists and other Red, radical groups are attempting to invade Jersey City behind the mask of a labor organization, and obtain a foothold here. Mayor Frank Hague has taken a firm and courageous stand against these enemies of law and order and our American institutions. All the people of Jersey City have been invited to attend a monster demonstration of loyalty to the Mayor at the Jersey City Armory, next Thursday evening, January 6th, 1938, at 8:30 o'clock, as an endorsement of Mayor Hague's attitude, and to pledge him their wholehearted support against the invasion of these Reds.

Every citizen of Jersey City has a vital interest in this question and it is your duty to be present at this meeting and to remain until it is over, even if you do not obtain a

seat in the Armory, as your pledge of loyalty to your Mayor and the City government.

EUGENE ERTLE

Busses will be stationed at Ocean Ave & Wigman Pway at 7:45 to take you to the meeting, and will be ready at the Armory after the meeting to return you to your home.

SHOW THAT YOU ARE A TRUE AMERICAN—

DO NOT FAIL TO ATTEND THIS MEETING.

(Union Label)

PLAINTIFFS' EXHIBIT "P-35."

VETERANS LAW AND ORDER COMMITTEE
921 BERGEN AVENUE
JERSEY CITY,

May 28, 1938

All organizations have been invited to participate in Jersey City's ceremonies to pay honor and respect to the flag of our country.

A parade will be held on Monday evening the 6th of June 1938 from Harrison Avenue and Bergen Avenue along Bergen Avenue to Journal Square.

All organizations—military, civil and political are asked to participate in their uniforms with colors.

Details concerning the parade and ceremonies will be issued by General William Higgins, the Marshall of the parade.

Call Journal Square 2-2100, or write the Veterans Law and Order Committee, 921 Bergen Avenue, Jersey City, and report on number of men you will have in the parade.

Yours very truly,

HUGH A. KELLY,
Chairman.

PLAINTIFFS' EXHIBIT "P-36."

(Letterhead of)

CITY OF JERSEY CITY
LAW DEPARTMENT
Jersey City, N. J.

December 20, 1937.

Mr. William J. Carney,
17 William Street,
Newark, New Jersey.

Dear Sir:

The newspapers contain articles in which you are quoted as saying that you intend to distribute pamphlets and papers in Jersey City, with or without the consent of the municipal authorities. You are further quoted in the press as saying that you intend to organize and hold a public meeting or public meetings in Jersey City, with or without consent or permit from the City administration.

Assuming you have been correctly quoted and that your intention is such as stated, I deem it advisable to direct your attention to the law of the State and to certain ordinances of the City, relating to the actions and conduct you contemplate carrying out.

On January 22, 1924, The Board of Commissioners of the Mayor and Aldermen of Jersey City passed an ordinance, entitled:

> "An Ordinance to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets."

Section 1 of that ordinance reads:

> "No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, papers, periodicals, books, magazines, circulars, cards or pamphlets."

This ordinance is still in force and any complaint regarding the violation of the provisions I have quoted or of

any other provision of the ordinance, is cognizable before the Police Courts of the City. The ordinance provides a penalty upon conviction, for any person violating the ordinance or causing it to be violated or consenting thereto, or permitting the violation of any of the provisions thereof. The penalty is a fine of not exceeding ten dollars or imprisonment for a period not exceeding ten days in the City Prison or in the County Jail, in accordance with the statutes in such cases made and provided, or both, for the first offense and a fine of twenty-five dollars or imprisonment not exceeding thirty days or both for each and every subsequent offense.

On the subject of public parades or public assembly, I call your attention to an ordinance adopted April 15, 1930, by the Board of Commissioners of Jersey City. It is entitled:

> "An ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage."

It provides that no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City, shall take place or be conducted until a permit shall be obtained from the Director of Public Safety. It further provides, by way of penalty, that any person or persons violating the provisions thereof shall, upon conviction before a Police Magistrate of the City of Jersey City, be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County Jail, for a period not exceeding ninety days or both. This ordinance also is in force at the present time.

I further call your attention to the law regarding unlawful assembly. It has been held in this State that where it is the common intent of the persons assembled to attain a purpose whether lawful or unlawful by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquillity and peace of the

neighborhood, and have a natural tendency to inspire rational, firm and courageous persons in the neighborhood with well grounded fear of serious breaches of the public peace, the crime of unlawful assembly is committed. This law prevails in this State. It is declared to be a misdemeanor and is punishable as such by imprisonment not exceeding three years or a fine not exceeding one thousand dollars, or both.

As corporation counsel of Jersey City, I am writing you this letter so that you and your representatives may clearly and fully understand the character of the act or acts you will commit in case you decide to enter Jersey City in violation of the City ordinances or of the laws of the State. In a spirit of fair warning, I inform you that if the laws of this State or the ordinances above cited are violated, or if any other laws of the State or ordinances of the City are violated, the perpetrators of these violations will be dealt with and punished according to law. It is the duty of the authorities of Jersey City and of Hudson County to maintain public peace and order by every lawful means at their command in the interest of the people of Jersey City and of Hudson County. That duty will be discharged.

I am sending a copy of this letter to the Prosecutor of the Pleas of Hudson County.

I am

Very truly yours,

JAMES A. HAMILL,
Corporation Counsel of Jersey City.

December 23, 1937.

Honorable James A. Hamill,
Corporation Counsel,
Jersey City, New Jersey.

Dear Sir:

I have been consulted concerning the letter written by you to William J. Carney dated December 20, 1937, in which

you seek, in what you say is a spirit of fair warning, to enlighten him concerning the statutes of New Jersey and the ordinances of Jersey City on leaflet distribution and on public meetings in your city.

Your letter is couched in language calculated to inspire fear in one not versed in legal fundamentals. My reaction to it is rather that you, too, although theoretically the impartial law enforcement officer of Jersey City, are overwhelmed by the hysterical outbursts of your Mayor in recent weeks. I have studied carefully your brief in opposition to the applications of the seven men jailed by Judge Botti for distributing innocuous circulars, and it furnishes the key which explains the threats of prosecution contained in your letter to Mr. Carney in which you take meticulous care to point out the possible fines and terms of imprisonment. Among other things you stated in your brief: "This leaves the applicants in the position of asking the court to review the question of whether the ordinance (on leaflet distribution) is or is not constitutional and the courts of this county do not determine such questions merely for the purpose of debate". I do not understand the duty of the courts of Hudson County to differ in any respect from the duty of courts in all other counties of this State when a constitutional issue is involved. If it is your confidence that the courts of Hudson County will not decide questions of constitutional right which has prompted you to warn Mr. Carney that you will continue enforcing the ordinance irrespective of the nature of the literature and the circumstances of its distribution, then we are miles apart in our respective views of constitutional privileges and the duty of the courts to protect them. I have every desire, however, to avoid all conflict between my clients and the police authorities of Jersey City, and I am wondering whether there is not some common ground in this field of law upon which we may meet. I have advised the distribution of a pamphlet entitled "The Wagner Labor Relations Act and Its Interpretation By The United States Supreme Court",

which will merely set forth the principal provisions of the statute and excerpts from the United States Supreme Court's opinions. Should you, in your interpretation of the Jersey City ordinance deem it necessary, each distributor in Jersey City will be assigned two persons, or a larger number if you prefer, whose task will be to pick up any of these pamphlets which may be dropped by the recipients on the sidewalks or streets.

In this connection I find that you also stated in your brief in the cases previously mentioned: "The general situation in this particular case is due to conditions and circumstances well known by the people of the State, and is an attempt of the applicants here to have reviewed by certiorari a municipal action and to contest the validity of an ordinance by the use of sharp practice and grounds and by their insistence upon personal rights". Exactly what this means I do not know, but I gather that insistence upon constitutional rights is regarded by you as sharp practice. This is so shocking a concept that I am glad, personally, to run the risk of the same stigma by advising my clients to continue to insist upon their constitutional privileges and personal rights. Will you be good enough, therefore, to let me know whether the distribution of the pamphlet above mentioned will have your approval, and whether you will advise the Jersey City police to this effect.

Your letter to Mr. Carney also states that under the ordinance adopted April 15, 1930 by the Board of Commissioners of Jersey City, no public parades or public assembly in or upon the public streets, highways, public parks, or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety, and that the penalty for violation is a fine not exceeding $200 or ninety days in jail or both. The reason an open air meeting is contemplated is that, as you well know, the owners of meeting halls in Jersey City have been so intimidated that they fear going against Mayor Hague's wishes will mean they will have to leave Jersey

City. All I ask is that you face these facts realistically. If you, as his legal advisor in municipal affairs, will inform the Mayor that it is unlawful for him to intimidate owners of halls in Jersey City, so that they will not hereafter refuse offers to pay for the use of their premises good currency which, but for the Mayor, they would be glad to earn, my clients will be happy to abandon their plan for an open air meeting and will hold all of their meetings indoors. However, unless you can prevail on the Mayor to make indoor meetings possible for them, they will have no alternative, as I see it, except to hold an open air meeting. Will you please let me know whether an open air meeting for the purpose of petitioning the Board of Commissioners of Jersey City to modify the leaflet distribution ordinance, and the ordinance on public meetings, and to take appropriate action against intimidation of owners of halls will be treated by you as a violation of the ordinance referred to in your letter.

Mr. Carney is appreciative of your high sense of fair play in warning him concerning the New Jersey law regarding unlawful assembly where acts of intimidation and disorder are intended, but he does not quite understand why you have volunteered advice on this subject. Mr. Carney informs me that at no time have he and his associates contemplated intimidation of any persons or the use of any methods which might lead to disorder at any meetings which they desire to hold in Jersey City, but which the authorities have thus far successfully prevented by methods quite generally understood. From the data submitted to me, it appears that all Mr. Carney and his associates have ever asked of the Jersey City official family is that owners of halls be not subjected to duress preventing the renting of their premises, that those interested in the C. I. O. have the right enjoyed by other groups to meet peaceably to discuss problems of common interest and that the police refrain from interfering by arrests and detention without cause with the constitutional rights of citizens of the United States and of

the State of New Jersey. Your warning on this subject is, I assume, also issued in good faith, and therefore I shall make a suggestion in the same vein. I am today writing Honorable Daniel J. Casey, Director of Public Safety, for permission to hold an open air meeting. He will undoubtedly seek your advice on this application. As I previously stated, if you can assure me the use of a hall in Jersey City for meetings, for which the owner will be compensated, there will be no necessity for holding one out of doors. If, however, you are unable to furnish this assurance then I must press the application for the open air meeting and I would suggest that you advise the Director of Public Safety that under the circumstances, the applicants have a lawful right to a permit and that he may assign as many police as he wishes to see that no intimidation, violence or other acts of disorder take place.

Since the matters discussed are of the utmost importance, I request a prompt reply to this letter.

Very truly yours,

Spaulding Frazer.

(Letterhead of)

CITY OF JERSEY CITY
LAW DEPARTMENT
Jersey City, N. J.

December 27, 1937.

Spaulding Frazer, Esq.,
744 Broad Street,
Newark, New Jersey.

Dear Sir:

I received in the afternoon of December 24th, your letter to me of December 23rd, in answer to a letter dated December 20th, written by me to your client, Mr. William J. Carney. My letter directed attention to the law respecting unlawful assembly and the two ordinances of Jersey City referred to herein.

The ordinance to preserve public peace and good order and to prevent riots and disorderly assemblage has been in force since the date of its adoption, April 21, 1930. The other ordinance regulating the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets, has been in force since the date it was passed, January 22, 1924.

The law regarding unlawful assemblage has always prevailed in this State. Everyone has been compelled to comply with these ordinances and no exceptions should be made in the case of your clients. No one has ever been permitted to violate either of these ordinances. There is no reason why your clients should not do the same. I have so advised the Mayor and City Commissioners.

Your letter, which is lengthy and discursive, contains a number of comments, suggestions, complaints and criticisms. These I am not answering now for the reason that no practical result would follow and no practical advantage could be gained by either of us from discussing them at this time.

I am

Yours very truly,

JAMES A. HAMILL
Corporation Counsel.

JAH.h

PLAINTIFFS' EXHIBIT "P-37."

[List of industrial plants located in Jersey City.]

PLAINTIFFS' EXHIBIT "P-38."

AN ORDINANCE to prohibit the placing, carrying or exhibiting on sidewalks or roadways of showboards, placards, banners or signs for the purpose of displaying them and prescribing the penalties for the violation thereof.

The Board of Commissioners of the City of Jersey City Do ORDAIN:

1. No person shall place, carry or exhibit or cause to be placed, carried or exhibited on any sidewalk, or on any roadway, any showboard, placard, banner or sign for the purpose of there displaying the same; provided, however, that nothing herein contained shall prevent the placing of business notices upon ordinary business vehicles so long as such vehicles are engaged in the usual business or regular work of the owner thereof.

2. Any person violating or causing to be violated, any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding fifty dollars ($50.00), or imprisonment for a period of not exceeding thirty (30) days in the City Prison or the County Jail or both, for each and every violation hereof.

3. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the City Criminal Courts of this City.

4. This ordinance shall take effect immediately.

Introduced: February 19, 1935.
Adopted: May 18, 1937.

Daniel Casey
Michael I. Fagen
William J. McGovern
Arthur Potterton
Frank Hague,
Commissioners.

Dated: City Clerk's Office,
Jersey City, May 18, 1937.
Eugene Ertle, City Clerk.

PLAINTIFFS' EXHIBIT "P-40."

Clipping From "Newark Sunday Call," November 21, 1937
(Late City Edition).

CIO Unit Here Plans Invasion Of Jersey City

Will Defy Hague by Mass Organization for Workers.

Rally Date Picked

Headquarters Set Up, With Drive On to Enroll Members.

Leaders of the Greater Newark Industrial Council, CIO, will launch a mass organization drive in Jersey City, whose Mayor, Frank Hague, is the labor faction's declared foe.

The drive will include a Jersey City meeting December 3 at a place to be decided. Organized and unorganized employees of Jersey City plants will be invited, as well as labor sympathizers.

Speakers at the meeting will include Allan Haywood, New York CIO regional director; Michael J. Quill, president of the Transport Workers' Union, a leading CIO affiliate in Manhattan, and Harry T. Wendrich, official of the Pressmen and Assistants' Union, Local 31, and president of Labor's Anti-Injunction League of New Jersey. William J. Carney, regional CIO director, will probably be chairman of the meeting. Whether John L. Lewis, national CIO head, will appear was not announced.

Headquarters Set Up.

Headquarters for the organization drive has been set up in the heart of the industrial area, and CIO leaders say that a membership groundwork has been laid in various

Newark CIO Body Enters Jersey City

Continued From First Page.

ers in New Jersey to meet with them in Newark.

Another angle to the Jersey City labor situation developed last night when George S. Pfaus, North Jersey editor of People's Press, a labor newspaper, said injunction proceedings would be sought against police in that city. The police, he said, confiscated copies of the paper when four of its representatives refused to discontinue distribution of it in Journal Square.

Injunction Vacated.

By vacating an injunction, Federal Judge Forman in Trenton yesterday ended a labor union jurisdictional dispute involving 500 employees of the New York Trap Rock Corporation. The writ, against Edward Shinn, president of Local 825, International Union of Operating Engineers, was vacated when Michael Breitkopf, counsel for Mr. Shinn, told Judge Forman that AFL leaders had given his client the right to organize the trap rock workers. The right had been contested by officials of a quarry workers' international union, who obtained the injunction.

In a decision yesterday the Newark Labor Relations Board recommended that Beth Israel Hospital reconsider the dismissal of Miss Gusta Thaun, discharged from the hospital September 30. Officials of the Associated Hospital and Medical Professional Workers, a CIO affiliate, had charged that Miss Thaun had been discharged for union activity. Hospital authorities could not be reached for comment on the board's recommendation.

PLAINTIFFS' EXHIBIT "P-42."

Clipping From "New York Times," December 27, 1937
(Hague Statement)

"In order that the people of Jersey City, particularly the heads of our industries, the business men, the members of our labor unions and the many thousands of other men and women who earn their livelihood here, may know the reasons for the controversy between the CIO and the Mayor and City Commissioners, I want to state the facts clearly, so that everyone will realize the importance of the problem confronting us.

"While uprisings and unrest were prevalent thorughout the country, Jersey City was free of any disorder or labor trouble. Peaceful conditions existed in our city. Contributing to this result was the fact that we have always required that industry not only maintain proper working conditions for its employes, but that the highest prevailing scale of wages should be paid to them, and the employers have willingly accepted these requirements, and what is of especial importance, is the fact that whenever a labor dispute arose the city officials gave freely of their time and energies to fairly adjust the dispute. In every instance the officials were successfuul in satisfying both the employes and their employers. Naturally, this became known throughout the country. It was a notable record, given wide publicity, and because of it Jersey City has become recognized as a most desirable city in which industries should locate. Hundreds of industries came here and this has so encouraged the City Commissioners that they have entered into an extensive publicity campaign throughout the country, under the direction of Mr. Raymond Greer, the city comptroller, inviting industries to locate here. Our advertisements detail to the nation the splendid position of Jersey City, and read as follows:

" 'Both business and labor are content in Jersey City. Here there is no discrimination against either capital or the working man. For 21 years a stable and continuous city administration has worked

"The CIO plan of campaign was first to enter Jersey City for the purpose of distributing literature in all the industries here and in the business houses; and if they succeeded their next move was to throw hundreds of pickets around various industries in order to proceed to drive the employes into their labor movement. How was this to be accomplished? The very best proof as to how these men act may be found in the thousands of instances in other cities where working people who refused to be so driven were followed to their homes and assaulted; their very lives and those of their families were endangered, as well as the lives of peaceful citizens who have no desire for violence.

Visions Threats

"It was also their plan to select in our business section retail stores, throw a group of pickets in front of the establishments and then proceed to destroy the business which represents perhaps hundreds of thousands of dollars, by adopting illegal tactics, threatening customers and preventing purchasers from entering. It is a matter of common knowledge that these illegal tactics have cost industries and business people millions of dollars, and in a great many instances the entire business was destroyed. And of equal importance is the tremendous loss which labor has suffered in wages during these long drawn out disputes with the attendant distress to the families of the employes. These are the methods which these men have applied in other cities in which they have directed their attacks, and Jersey City would be no exception if they were permitted to follow out their program here

"I am endeavoring to do my duty as mayor of the City of Jersey City, pledged to protect the interest of the people and their property, and to see to it that our industries which daily employ thousands of our citizens, are not destroyed and thousands of unemployed forced upon the streets. I know that every new industry which locates here means employment for the unemployed, and it is only natural that, as the head of the city, it should be my desire to endeavor, to the best of my humble ability, to bring back to work as many of the thousands of unemployed as possi-

importance, is the fact that when-
a labor dispute arose the city
tion of
follows:

"'Both business and labor are content in Jersey City. Here there is no discrimination against either capital or the working man. For 24 years a stable and continuous city administration has worked for the good of both—insisting on satisfactory working conditions and fair compensation for labor, and at the same time safeguarding business against the violence of irresponsible elements. The result is an attitude of mutual respect and understanding.'

Sees Industries Interested

"These advertisements have interested many of the largest industries in America; so much so that they are in communication with the comptroller and surveys are actually being made by large concerns who are contemplating locating in our boundaries.

"These advertisements and the enviable record which we have established are the direct cause for the open attack of the CIO leaders upon Jersey City. They are opposed to any city which can boast about the absence of unrest and the freedom from labor disorder. Their principal method of operation is to create dsorder; to bring about labor disputes and to drive industries out of the city where they cannot gain control. Having by their methods driven industries out of other cities and realizing that these industries are coming to Jersey City they, in desperation, are determined to resort to every means of preventing industry from coming here. Their battle cry is to crush Hague because he has the courage to prevent them from gaining a foothold in Jersey City. That is the real purpose behind the CIO movement in Jersey City. Their campaign is headed by William Carney, who is the regional director for the CIO in this state, a man who comes from Ohio and has lived here only a short time.

great many instances the entire business was destroyed. And of equal
the unemployed, and it is only natural that, as the head of the city, it should be my desire to endeavor, to the best of my humble ability, to bring back to work as many of the thousands of unemployed as possible. In my efforts so to do I am striving to preserve to every citizen the right to peacefully earn a livelihood here.

"My whole life has been spent in the midst of the working people of our city. I have always respected them and they have always respected me, because I understand their problems. I believe, and have always believed, in the organization of labor; but organization along peaceful lines, which insure to the working man a peaceful and tranquil existence. I have always realized that the honest working man recognizes the relationship of labor and industry and that the seuccessful adjustment of difference is the underlying basis of contentment between employer and employe. I have realized that to make room for labor there must be provided the industry, and so my every act has always been to deal fairly both with industry and labor.

"If the people of my city believe in me, as I know they do, all I ask is that the people of Jersey City aid me in my efforts to obstruct this lawless element, whose only objective is to crush by terrorism; whose motive is to force itself upon our city for the purpose of destroying life and property by violence. If the people of Jersey City stand behind me as they have in the past, I can assure them that before this campaign of violence and terrorism is ended I will bring to justice all those who may be responsible for any unlawful attacks and violence in this city."

PLAINTIFFS' EXHIBIT "P-43."

Clipping From "Jersey Journal," January 13, 1938 (Chamber of Commerce Fiftieth Annual Dinner, Hotel Plaza, January 12, 1938).

About 500 men, representing every commercial and industrial organization in Jersey City, last night heard Mayor Frank Hague reaffirm his determination to "protect the great industries which provide a livelihood for our citizens."

"As long as I am mayor of this city, the great industries which provide a livelihood for our citizens will not be 'invaded,'" Hague declared, amid cheers and applause.

The annual dinner of the Chamber of Commerce, held last evening at the Hotel Plaza, Journal Square, attracted a greater number of business men than had attended any of the annual banquets of the chamber in the 50 years since it was organized. Hague and Congressman Hamilton Fish of New York, a Republican, were the principal speakers.

Congressman Fish refused to take any stand in Mayor Hague's "particular fight," but he did deliver a stinging attack upon the forces against which Hague is combating. He said:

"I do not propose to attempt to advise the people of Jersey City as to what their attitude should be toward the CIO. That is a matter that rests entirely with them, and their constituted authorities.

"There is no doubt but that the Communist party in this country is using the CIO for its own purposes of spreading Communism and revolutionary spirit among our wage earners. I believe that the rank and file of the CIO are loyal citizens, but that many of the organizers are avowed Communists who seek to spread industrial unrest.

"I agree with Mr. David Dubinsky, president of the International Ladies' Garment Workers' Union, affiliated with the CIO, when he infers that the Communist elements in the CIO have caused the failure of the peace negotiations with the American Federation of Labor, and rejoice at it.

"Every American interested in organized labor wants to see labor united in a law-abiding American way, and there should be no real difficulty in bringing this about, if the Communist element in the CIO is eliminated. I know Mr. William Green, president of the American Federation of Labor, and am confident that he will never compromise with Communism in any shape or manner. He is willing to accept industrial unionism on its own merits,

Abhors Communism

"I loathe and abhor Communism and all other forms of foreign dictatorships that seek to undermine and destroy our free institutions both from within and from without. The aims and purposes of the Communists are so utterly destructive of our free institutions and our liberties that there is no room whatever for Communism in the United States when the facts are known. We are still a free country, and we propose to keep it free from all forms of alien dictatorships of the left or of the right.

"What is it that the Communists seek to impose upon the American people? (1) Destruction of all forms of religion and teaching hatred of God; (2) destruction of private property and inheritance; (3) using the Communist International, with headquarters at Moscow, to spread revolutionary propaganda and to incite strikes, riots, sabotage, and industrial unrest in all non-Communist nations; (4) to promote the bitterest kind of class hatred; (5) to develop a class or civil war in order to obtain the ultimate objective; (6) a Soviet dictatorship under the red flag with a world capital at Moscow.

"The best method of fighting these principles and objectives of Communism is not through force but rather by education and pointing out the tragic failure of Communism in Soviet Russia.

"The Communist government of Russia is an absolute despotism, based upon fear, a huge and bloodthirsty spy system backed by armed force and violence. There is no liberty of speech, or the press, or of assembly. There is nothing but suppression of the rights and liberties of the individual, the control of the people through fear, regimentation, and the bread ticket. The impoverishment, undernourishment and

"The larger strikes, violent though they have been, are merely forerunners of what to expect in the near future, with a huge loss in the pay roll, in economic stability, and an increase in class hatred and Communism. That Communism feeds on depression and unemployment is self-evident, as well as on any form of discontent, such as strikes, riots, or industrial unrest.

Hague Fiery

Mayor Hague put into his speech a zest and fiery forcefulness characteristic of his old time political orations. He explained his attitude in the present conflict with radical elements in the American Civil Liberties Union, which organization he charged is "the Communist party under another name" and his attitude toward the CIO to the membership of which he paid tribute but the leadership of which he branded as "Communistic."

In his opening remarks, the mayor praised the Chamber of Commerce for its patriotism in arranging the public demonstration of loyalty to the civil officials in their campaign against the so-called "invasion" of Jersey City by radical elements in the union organization. He made it clear that he is disposed to support the labor organizations and the workers who are members of the CIO, but is unalterably opposed to the "racketeer" element among labor leaders.

"Jersey City is a moral, clean city," he said. "We have no racketeers here, no vice and no immorality."

Later the mayor said:

"I have been at the head of the government of Jersey City for more than 25 years. I've tried to cooperate with industry and with the workers. Jersey City is an industrial community. I certainly have no feeling against the honest working man who has been induced to join up with the CIO, but I have an unalterable contempt for certain elements among the leaders of the CIO.

Not a Czar

"I am not a tyrant or a czar. When they say that Mayor Hague is a tyrant who tries to deprive the working man of the right to organize when the say I attempt to op-

"There is no doubt but that the Communist party in this country is using the CIO for its own purposes of spreading Communism and revolutionary spirit among our wage earners. I believe that the rank and file of the CIO are loyal citizens, but that many of the organizers are avowed Communists who seek to spread industrial unrest.

"I agree with Mr. David Dubinsky, president of the International Ladies' Garment Workers' Union, affiliated with the CIO, when he infers that the Communist elements in the CIO have caused the failure of the peace negotiations with the American Federation of Labor, and rejoice at it.

"Every American interested in organized labor wants to see labor united in a law-abiding American way, and there should be no real difficulty in bringing this about, if the Communist element in the CIO is eliminated. I know Mr. William Green, president of the American Federation of Labor, and am confident that he will never compromise with Communism in any shape or manner. He is willing to accept industrial unionism on its own merits, free of Communist agitators.

Sees Labor Alarmed

"The growing hostility between the CIO and the American Federation of Labor is harmful to the cause of labor. But any compromise that includes the revolutionary propaganda and destructive activities of the Communist organizers would be disastrous to American labor and to American industry. I predict that if the CIO continues on its separate way the next step will be a bitter knock-down and drag-out fight on the part of the Communist element to take over control of that organization, oust its present leaders or convert them to Communism.

"I want to make it clear that I am not a Fascist, ultra conservative, reactionary, or Bourbon who is opposed to progress or meeting changing economic conditions with new ideas. I am a Lincoln Republican, who believes in popular government and has faith in our free institutions and in the American people. I was an arden follower of Theodore Roosevelt, and stood for social and industrial justice back in 1912, just as I still advocate it today.

"I believe in liberalism, which is nothing more than the right of the people to govern themselves, and which was the fundemental political faith of Abraham Lincoln. I not only have faith in the people, but also in our representative and constitutional form of government, which is the fairest, wisest, most honorable and best form of government devised by the mind of man.

of religion and teaching hatred of God; (2) destruction of private property and inheritance; (3) using the Communist International, with headquarters at Moscow, to spread revolutionary propaganda and to incite strikes, riots, sabotage, and industrial unrest in all non-Communist nations; (4) to promote the bitterest kind of class hatred; (5) to develop a class or civil war in order to obtain the ultimate objective; (6) a Soviet dictatorship under the red flag with a world capital at Moscow.

"The best method of fighting these principles and objectives of Communism is not through force but rather by education and pointing out the tragic failure of Communism in Soviet Russia.

"The Communist government of Russia is an absolute despotism, based upon fear, a huge and bloodthirsty spy system backed by armed force and violence. There is no liberty of speech, or the press, or of assembly. There is nothing but suppression of the rights and liberties of the individual, the control of the people through fear, regimentation, and the bread ticket. The impoverishment, undernourishment, and often starvation of a disarmed and terrorized people is the order of the day.

"We have nothing to do with the form of government in Soviet Russia, but in view of the fact that the Communist International at Moscow and the Communists in the United States, all of whom take their orders from the Moscow International, are spreading revolutionary propaganda here and seeking to impose Communism upon us, we have a right and a duty to find out the facts as to how it works in Russia and expose its tragic and horrible failure.

"Communists either led or fanned the flames in all of the following strikes, and in numerous instances blood was shed and people killed: The longshoremen's strike, which ended in a general strike in San Francisco; the Imperial Valley strike among the fruit-growing industries in California; the truck drivers' strike in St. Paul and Minneapolis, which ended in a general strike and resulted in martial law; the Toledo auto workers' strike; the packing industry strike in Chicago; the textile industry strikes in Rhode Island, Massachusetts, New Jersey and Connecticut; the milk, taxi and fur strikes in New York; the coal strikes in Kentucky, West Virginia and Pennsylvania; the relief workers' strikes in Arizona and Oklahoma; the agricultural workers' strike in New Jersey, and the share-croppers' strike in Tennessee, Arkansas and Alabama. In addition, the Communists are responsible for numerour other strikes and disorders throughout the country.

against the so-called "invasion" of Jersey City by radical elements in the union organization. He made it clear that he is disposed to support the labor organizations and the workers who are members of the CIO, but is unalterably opposed to the "racketeer" element among labor leaders.

"Jersey City is a moral, clean city," he said. "We have no racketeers here, no vice and no immorality."

Later the mayor said:

"I have been at the head of the government of Jersey City for more than 25 years. I've tried to cooperate with industry and with the workers. Jersey City is an industrial community. I certainly have no feeling against the honest working man who has been induced to join up with the CIO, but I have an unalterable contempt for certain elements among the leaders of the CIO.

Not a Czar

"I am not a tyrant or a czar. When they say that Mayor Hague is a tyrant who tries to deprive the working man of the right to organize, when the say I attempt to oppress the working man, I challenge that charge.

"I am not a ruler, I am not a tyrant, a czar or a dictator as has been charged. I have simply tried to live up to my duty and my obligations as mayor of this city. I've tried to protect both labor and industry in Jersey City. I have tried to encourage industry to locate in Jersey City because that means employment of labor and each time an industry is driven out of our city it means loss of employment to hundreds of our citizens.

"I have never tried to hamper the CIO from organizing in Jersey City in a peaceful, lawful, and orderly manner. There are many units of the CIO here and they have been permitted to organize, to strike and even to picket in this city. The CIO has organized here and has had public meetings here and they were not molested or disturbed. So long as they conduct their affairs in a peaceful and law-abiding manner they are welcome and will enjoy the same rights and privileges as are accorded the American Federation of Labor.

"These CIO Reds, however, Mayor Hague said, "are disturbed by our campaign of advertising in which we have called attention to the fact that Jersey City is a place in which peaceful relations exist between the employer and the employed. In our advertisements we have informed the world that we will protect industry as well as labor and will not permit racketeer labor leaders to interfere with and molest industry. We have said to them 'You shall conduct your own business without interference [illegible] labor racketeers.'"

Hague then went on to tell of having read in the newspapers of the threat made by officials of the American Civil Liberties Union to lead hundreds of members of a radical branch of the seamen's union into Jersey City at a time when there was no strike of seamen in Jersey City. The threat was made by Harry Bridges, radical leader of the seamen's union, he said.

"We were familiar with the record of bloodshed and violence and of the millions of dollars in property losses caused by this man Bridges and his followers on the West coast," Hague declared. "They had decided Jersey City was too peaceful and must be invaded and that the peace and quiet of our community must be disturbed. It was my duty, as I saw it, to notify the Commissioner of Public Safety that this invasion must not take place. We met them when they entered Jersey City and escorted them to the city lines. Then one of these radical leaders, one of these Reds, a Communist, came here leading a delegation. Mr. Garfield Hays led this delegation and when he realized the Jersey City Police were determined to do their duty he wrapped himself in an American flag and began to shout about his civil liberties and constitutional rights. What most people did not know is that while he was wrapped in the American flag there was inside, under his coat, the red flag of Red Russia

"I want to tell you that as long as I am mayor of this city, I will exert every ounce of law that is invested in me to drive this radical element out of our city."

The mayor declared that "The American Civil Liberties Union is the Communist party under another name," and told of the activities of that organization in suing out a writ of injunction in the Federal Court, which injunction was vacated on the following day by the Federal Court of Appeals. He also told of a suit by Arthur Garfield Hays against Hague and Director of Public Safety Daniel Casey for damages to the extent of $25,000, which suit is still pending.

Criticizes Carney

William Carney, CIO regional director, was subjected to severe criticism by the mayor, who charged Carney—"this

The mayor spoke feelingly of the "Red Communists" who hide behind "a smoke screen of protests in defense of their 'civil liberties and constitutional rights' to cover their anti-American activities. As soon as they begin to shout about 'free speech' and 'free press' and 'civil rights' and 'constitutional rights,' I know they are Communists," he said. "They are not really fighting for rights but using this cry as a subterfuge. Did the people of the city of Detroit receive constitutional protection from this element? Would it be 'constitutional' to permit the destruction of the rights of our workers and of industry here just for the sake of stopping this cry of the invaders who complain that their 'constitutional rights' were ignored? Must we sacrifice all civil rights and liberties of the citizens of Jersey City just to satisfy those who would destroy us in the name of their constitutional 'liberties'?"

Raising his hand and putting additional emphasis into his utterances, the mayor proclaimed:

"The sooner we teach these people what the Constitution really means, the better it will be for all concerned."

Fires on Baldwin

Hague then reviewed the record of Roger N. Baldwin, director of the American Civil Liberties Union, whom he characterized as "an out and out Communist," telling of the testimony before the Fish committee of Congress, when Baldwin declared he would uphold the right of any citizen or alien to advocate assassination and the forcible overthrow of government and of Baldwin's conviction and imprisonment as a draft dodger during the World War.

"This is the man," Hague said, "who says he is going to teach Mayor Hague Americanism."

Hague also attacked Morris L. Ernst, Baldwin's chief aide, declaring Ernst is treasurer of the Garland Fund, established for the spread of Communistic propaganda in this country. He charged Ernst in attempting to organize the Lawyers Guild and inducing the Newark Newspaper Guild to join the CIO, evidenced a determination to gain control of the courts and the press as part of the Red movement. He also attacked attempts to organize

Dr. Hugo Berman, chairman of the general committee, opened last night's forum at the conclusion of the dinner service and he introduced John H. Allen, president of the Chamber of Commerce, who served as toastmaster. Allen presented Congressman Fish and Mayor Hague. The mayor's speech was broadcast over a network of local radio stations and was heard throughout the metropolitan area.

Among those seated at the speakers' table were Counselor Louis Comen, president of the Hoboken Chamber of Commerce; A. Z. Benedict, oldest member of the board of directors of the Jersey City Chamber of Commerce; Robert Carmichael, vice-president of the Commercial Trust Co.; George J. Baumann, assistant counsel, Jersey City Chamber of Commerce; Commissioner Victor H. Berman, of the Interstate Park Commission; Kelley Graham, president of the First National Bank of Jersey City; Commissioner Arthur Potterton, director of Revenue and Finance of Jersey City; Joseph G. Parr, president of the Trust Company of New Jersey; Louis Sherwood, oldest past president of the Chamber of Commerce; Dr. Hugo V. Berman, chairman of the general committee; Mayor Hague, John H. Allen, president of the Chamber of Commerce and toastmaster of the evening; Congressman Hamilton Fish, of New York; former Judge Robert Carey, Rev. Canon Henry B. Bryan, Edwin B. Lord, executive secretary of the Chamber of Commerce; Jacob Binder, president of the New Jersey Association of Commercial Executives; William H. Hall, vice-president of the Chamber of Commerce, and Surrogate John H. Gavin.

met them when they entered Jersey City and escorted them to the city lines. Then one of these radical leaders, one of these Reds, a Communist, came here leading a delegation. Mr. Garfield Hays led this delegation and when he realized the Jersey City Police were determined to do their duty he wrapped himself in an American flag and began to shout about his civil liberties and constitutional rights. What most people did not know is that while he was wrapped in the American flag there was inside, under his coat, the red flag of Red Russia.

"I want to tell you that as long as I am mayor of this city, I will exert every ounce of law that is invested in me to drive this radical *element out of our city.*"

The mayor declared that "The American Civil Liberties Union is the Communist party under another name," and told of the activities of that organization in suing out a writ of injunction in the Federal Court, which injunction was vacated on the following day by the Federal Court of Appeals. He also told of a suit by Arthur Garfield Hays against Hague and Director of Public Safety Daniel Casey for damages to the extent of $25,000, which suit is still pending.

Criticizes Carney

William Carney, CIO regional director, was subjected to severe criticism by the mayor, who charged Carney—"this great labor leader from the West, this great leader who brought about all the bloodshed and disorder in Ohio"—had made public declaration of his intention "to invade Jersey City whether Mayor Hague likes it or not." He quoted Carney as having threatened that, "law or no law, we'll demand our rights and let Hague dare to stop us."

"Gentlemen," said Hague, "we stopped them. Not only did we stop them but we locked them up. The deputy chief of police warned Mr. Carney's followers that they were about to violate the law; that they were committing illegal assemblage, and that if they persisted they would be subjected to arrest. These invaders answered, 'Well, we get our orders from Carney, you get yours from Hague—we are going to obey our orders and we don't care about Hague or his Jersey City laws.'

"Now," Hague asked, "if I had permitted these intruders to carry out their purpose, what would have happened to industry in this city and to the thousands of our workers who would have been destroyed?"

Hague then declared, "So long as I am mayor of Jersey City the great industries which provide livelihoods for our citizens will not be invaded and destroyed."

[illegible] in the name of their constitutional "liberties"?"

Raising his hand and putting additional emphasis into his utterances, the mayor proclaimed:

"The sooner we teach these people what the Constitution really means, the better it will be for all concerned."

Fires on Baldwin

Hague then reviewed the record of Roger N. Baldwin, director of the American Civil Liberties Union, whom he characterized as "an out and out Communist," telling of the testimony before the Fish committee of Congress, when Baldwin declared he would uphold the right of any citizen or alien to advocate assassination and the forcible overthrow of government and of Baldwin's conviction and imprisonment as a draft dodger during the World War.

"This is the man," Hague said, "who says he is going to teach Mayor Hague Americanism."

Hague also attacked Morris L. Ernst, Baldwin's chief aide, declaring Ernst is treasurer of the Garland Fund, established for the spread of Communistic propaganda in this country. He charged Ernst in attempting to organize the Lawyers Guild and inducing the Newark Newspaper Guild to join the CIO, evidenced a determination to gain control of the courts and the press as part of the Red movement. He also attacked attempts to organize teachers in a CIO unit as part of a program to inculcate radical and Communistic teachings into the educational system of the United States.

Speaking of Ernst, Hague said: "He has Communism spread throughout the CIO and strives to control that organization. The purpose is to destroy life and property."

In conclusion Hague said:

"Better Wake Up"

"I say to the people of this country, 'You better wake up!' The time is not far off when you will find this country is in serious conflict. It is the duty, not only of the Mayor of Jersey City, but of every public official in America, to tell the people what is going on in this land and to protect the interests of his people, of his government and of his flag against this Red invasion."

The Mayor addressed an audience of business men representing practically every industry within the city. This audience offered a vivid contrast to that addressed by him last week when he spoke before an assemblage representing almost every labor organization, civic society, fraternal, veteran and social organization in Jersey City.

Commission; Kelley Graham, president of the First National Bank of Jersey City; Commissioner Arthur Potterton, director of Revenue and Finance of Jersey City; Joseph G. Parr, president of the Trust Company of New Jersey; Louis Sherwood, oldest past president of the Chamber of Commerce; Dr. Hugo V. Berman, chairman of the general committee; Mayor Hague, John H. Allen, president of the Chamber of Commerce and toastmaster of the evening; Congressman Hamilton Fish, of New York; former Judge Robert Carey, Rev. Canon Henry B. Bryan, Edwin B. Lord, executive secretary of the Chamber of Commerce; Jacob Binder, president of the New Jersey Association of Commercial Executives; William H. Hall, vice-president of the Chamber of Commerce, and Surrogate John H. Gavin.

[illegible] appeal was not announced.

Headquarters Set Up.

Headquarters for the organization drive has been set up in the heart of the industrial area, and CIO leaders say that a membership groundwork has been laid in various unions.

An inkling of the drive was given last week in a demand by Mr. Carney for an investigation of what he termed the "abrogation of civil rights" in Jersey City in connection with a strike in a steel flooring concern. He said police had ordered the strike called off "without the formality of an injunction."

Announcement of plans by labor for legislative action was made last night by Edward Selden, organizer in this area for the Federation of Architects, Engineers, Chemists and Technicians.

Mr. Selden said representatives of the three New Jersey CIO councils—Greater Newark, Trenton and South Jersey—would go to Washington this week with other CIO labor leaders to discuss with New Jersey Congressmen labor legislation, specifically the Wagner Labor Relations act and wages-and-hours bills.

The trip, he said, was at the suggestion of a group of Congressmen who had declared themselves unable to accept the invitation of CIO lead-

Continued on Page 2, Column 4.

[illegible] Discovers Blaze'

PLAINTIFFS' EXHIBIT "P-44."

[Full page advertisement in Jersey Journal, dated January 6, 1938 captioned "Proclamation". Sub-title, "Mayor Hague's appeal to the people". The body of the Proclamation reads, as follows:]

"This meeting called by the Jersey City Chamber of Commerce and allied civic organizations will show to the nation that the people of the city are behind me solidly in my efforts to keep the red army of the invaders, hiding behind the mask of the C. I. O., out of Jersey City. Your continued presence until the conclusion of this rally is necessary to serve notice upon the whole country that I have the support of all of the people of Jersey City in my efforts to keep our city free from this menace.

"Be present and please do not leave until the end of the meeting at ten-thirty o'clock.

FRANK HAGUE, Mayor.

EUGENE ERTLE,
City Clerk."

PLAINTIFFS' EXHIBIT "P-45."
Clipping From "Jersey Journal," January 7, 1938.

THE JERSEY JOUR

FRIDAY, JANUARY 7, 1938

...ated American Nig...

Text of Hague Speech At Vast Anti-Red Rally

The text of Mayor Frank Hague's address at the anti-Communism meeting at the armory last night:

Let me take this opportunity of thanking the Chamber of Commerce for their splendid, patriotic efforts in sponsoring this meeting; I want also to thank the veterans, the labor organizations and all the other civic groups for their fine co-operation. And let me thank the people who have assembled here and filled this great building to capacity and friends who are standing by thousands in the streets outside, for this expression of their loyalty and support in my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization.

You often wonder what this is all about—whether Mayor Hague is an enemy of labor. Let me say I have been a friend of labor for over 25 years. Our city is an industrial city. We have nine large trunk terminals here. We have thousands and thousands of working people employed in industry and I have never yet had any difficulty with the people in those industries.

For Working People

I come from working people! My father before me toiled for his living in this city. All my associates have been working people. I believe absolutely in the right of working men to organize, bargain collectively and to strike for improved working conditions and higher wages. I have no quarrel with the hundreds of thousands of honest working people who have been induced to joint the CIO in the belief that it is an American labor organization, but I am absolutely against any union whose leaders are enemies of our government, and for the

Federation of Labor. They obtained charters throughout the country for new trades and crafts under the federation and when they felt strong enough they selected John L. Lewis as a "window dresser" to lead the movement which they thought would succeed in taking over the entire labor group in this country. President William Green was suspicious of these new elements. He publicly denounced them and was able to defeat the purpose of John L. Lewis and his followers. Failing in this effort, they thought themselves strong enough, because of the large number of Communist unions they had organized under the American Federation of Labor to declare open warfare, and John L. Lewis served notice on President Green that his terms must be accepted or they would break away.

Red Army-CIO

The division took place, with the Red army, known as the CIO, under the leadership of Lewis, Brophy and hundreds of Communist associates, on one side, and William Green of the conservative labor group on the other side. Immediately war was declared by this Red army on several of the greatest industries in this country. Riot, disorder, bloodshed, sit-down strikes and property destruction began, defiance of law and order was boldly declared and attacks made on government in many cities. They had to move fast, they had to strike and make progress immediately. Lines were drawn, with the American Federation of Labor on one side and the CIO on the other.

I believe it my duty on this occasion to lay all my cards on the table. I want to make plain

cause the collapse of our government.

These are the forces that have selected me for destruction. That this has been a city of law and order means nothing to these Red invaders. They have decided that the industries of this city must fall and they must be given the right to intimidate and browbeat the working people of this city. Jersey City is marked for destruction. They are broadcasting all over the country that Mayor Hague has defied the CIO, he is an enemy of the Reds and he must be punished.

As long as I am mayor and as long as I have power, I shall stand and oppose this Red group —they who enter and destroy industry.

otic efforts in sponsoring this meeting; I want also to thank the veterans, the labor organizations and all the other civic groups for their fine co-operation. And let me thank the people who have assembled here and filled this great building to capacity and friends who are standing by thousands in the streets outside, for this expression of their loyalty and support in my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization.

You often wonder what this is all about—whether Mayor Hague is an enemy of labor. Let me say I have been a friend of labor for over 25 years. Our city is an industrial city. We have nine large trunk terminals here. We have thousands and thousands of working people employed in industry and I have never yet had any difficulty with the people in those industries.

For Working People

I come from working people! My father before me toiled for his living in this city. All my associates have been working people. I believe absolutely in the right of working men to organize, bargain collectively and to strike for improved working conditions and higher wages. I have no quarrel with the hundreds of thousands of honest working people who have been induced to joint the CIO in the belief that it is an American labor organization, but I am absolutely against any union whose leaders are enemies of our government, and for the destruction of American freedom and the setting up of a Communist nation. At the invitation of Samuel Gompers, late president of the American Federation of Labor, I was the principal speaker at the national conventions of that body in Baltimore and Atlantic City, and was elected to honorary membership. I defy any man to point to me as an enemy of labor or of working people. For 25 years I have been at the head of the government of this industrial city, 90 per cent of whose population are wage earners, most of them members of labor organizations, and recently I was re-elected mayor by an almost unanimous vote of these typical American working people. I am a firm advocate and believer in adequate wages and fair conditions for working people. I have always been able to settle labor controversies here by arbitration. I have never permitted massed picketing in this city. I have never permitted a strikebreaker to enter the boundaries of Jersey City. I have never permitted any business or industry which has been established after years of struggle and investment to be destroyed by an excited mob, even if they had real grievances.

For years we have never understood these practices that have been introduced—mass picketing introduces violence, threats,

a "window dressing" movement which they thought would succeed in taking over the entire labor group in this country. President William Green was suspicious of these new elements. He publicly denounced them and was able to defeat the purpose of John L. Lewis and his followers. Failing in this effort, they thought themselves strong enough, because of the large number of Communist unions they had organized under the American Federation of Labor to declare open warfare, and John L. Lewis served notice on President Green that his terms must be accepted or they would break away.

Red Army-CIO

The division took place, with the Red army, known as the CIO, under the leadership of Lewis, Brophy and hundreds of Communist associates, on one side, and William Green of the conservative labor group on the other side. Immediately war was declared by this Red army on several of the greatest industries in this country. Riot, disorder, bloodshed, sit-down strikes and property destruction began, defiance of law and order was boldly declared and attacks made on government in many cities. They had to move fast, they had to strike and make progress immediately. Lines were drawn, with the American Federation of Labor on one side and the CIO on the other.

I believe it my duty on this occasion to lay all my cards on the table. I want to make plain to the American people the motives behind this Communist movement and call them by their right names. Of course, the great mass of honest working people who have been induced to join the CIO do not know the facts. I believe them to be true Americans. I want them to know the records of the Red leaders who are in absolute control of that organization, every one of whom is an associate of Roger N. Baldwin and his partners in Communism. These Communists direct the Red army, plan the campaign against every city and every industry selected as a victim and assign the Communist lawyers for the battles in court. Roger N. Baldwin is a noted radical. He was arrested during the war as a slacker, pleaded guilty and was sentenced in the United States Court in the City of New York to one year in prison, which sentence he served. He is proud of that record. He was also convicted in Passaic Coupnty for inciting riot in a labor dispute, and sentenced to six months in the penitentiary by a county judge. He has testified before a United States Congressional committee that he believes in the right to advocate murder, assassination and the overthrow of the United States Government. Morris Ernst, general counsel for the CIO, is treasurer of the Garland Fund and connected with numer-

cause the collapse of our government.

These are the forces that have selected me for destruction. That this has been a city of law and order means nothing to these Red invaders. They have decided that the industries of this city must fall and they must be given the right to intimidate and browbeat the working people of this city. Jersey City is marked for destruction. They are broadcasting all over the country that Mayor Hague has defied the CIO, he is an enemy of the Reds and he must be punished.

As long as I am mayor and as long as I have power, I shall stand and oppose this Red group —they who enter and destroy industry.

I hope this is an inspiration for others in protest against this Red menace. Jersey City will stand firm against this Red menace.

ess
ust

never permitted a strikebreaker to enter the boundaries of Jersey City. I have never permitted any business or industry which has been established after years of struggle and investment to be destroyed by an excited mob, even if they had real grievances.

For years we have never understood these practices that have been introduced—mass picketing introduces violence, threats, destruction of industry, driving thousands and thousands of people out of work.

"We are a law-abiding community. We haven't any disorder in Jersey City.

That is the reason we have been selected by the CIO leaders, under the Civil Liberty Union. The element which I have branded as Communists and enemies of law and order gained control of the Seamen's Union on the West Coast. Under the leadership of Harry Bridges, alien-born and never naturalized (he boasts he will never become an American citizen) they began an uprising in the largest city on the Coast, took complete control of the city, threw it into a condition of violence and chaos such as never before happened in this country. Then this man, Bridges, came East, intending to take over and organize the waterfronts of the Atlantic Coast cities under his Communist domination. Trouble started. Law enforcement agencies and conservative labor organizations opposed Bridges. Violence and disorder ensued.

Jersey City Attacked

An attack was opened on Jersey City. There was no strike here; our workers were satisfied. Hundreds of Communist organizers tried to invade Jersey City. They were turned back at the city line by an efficient police department under the authority of courageous officials. That upset them; an American city and American officials had dared to challenge them—it must not be on their record that they were not permitted to bring disorder and violence into Jersey City. The fake strike called, they gave it up as a bad job, although Arthur Garfield Hays wrapped himself in the American flag and paraded our streets. Lawsuits were begun, injunction proceedings started—no result. Jersey City was a marked city; it must be invaded and conquered. No public official must be permitted to set himself above the CIO. I am trying to show them they are no bigger than the law, the law that rules all of us. It rules me and it must rule them. I am strong in this fight, not because of any personal strength or influence, but when a man represents the strength of American patriotic public opinion against Communism, which would destroy America, he is bound to win. For years this Red group had been trying to penetrate the American

citing riot in a labor dispute, and sentenced to six months in the penitentiary by a county judge. He has testified before a United States Congressional committee that he believes in the right to advocate murder, assassination and the overthrow of the United States Government. Morris Ernst, general counsel for the CIO, is treasurer of the Garland Fund and connected with numerous organizations identified with Communism and Soviet Russia. Garland, who was a noted Red radical, was convicted in Massachusetts of running a free love farm and sent to the penitentiary. He left a fortune of millions to promote and continue the radical movement. Morris Ernst has faithfully followed his wishes and the record shows that enormous sums from this fund have been spent to promote un-American and Communistic propaganda. John Brophy, noted Communist, second in command to John L. Lewis, is an alien-born radical who has been mixed up with most of the violent labor disturbances in this country for the past 20 years. Some years ago he tried to wrest control of the miners' union from John L. Lewis and during the campaign for the presidency of the union Lewis denounced Brophy and his entire ticket as Communists. Brophy was defeated.

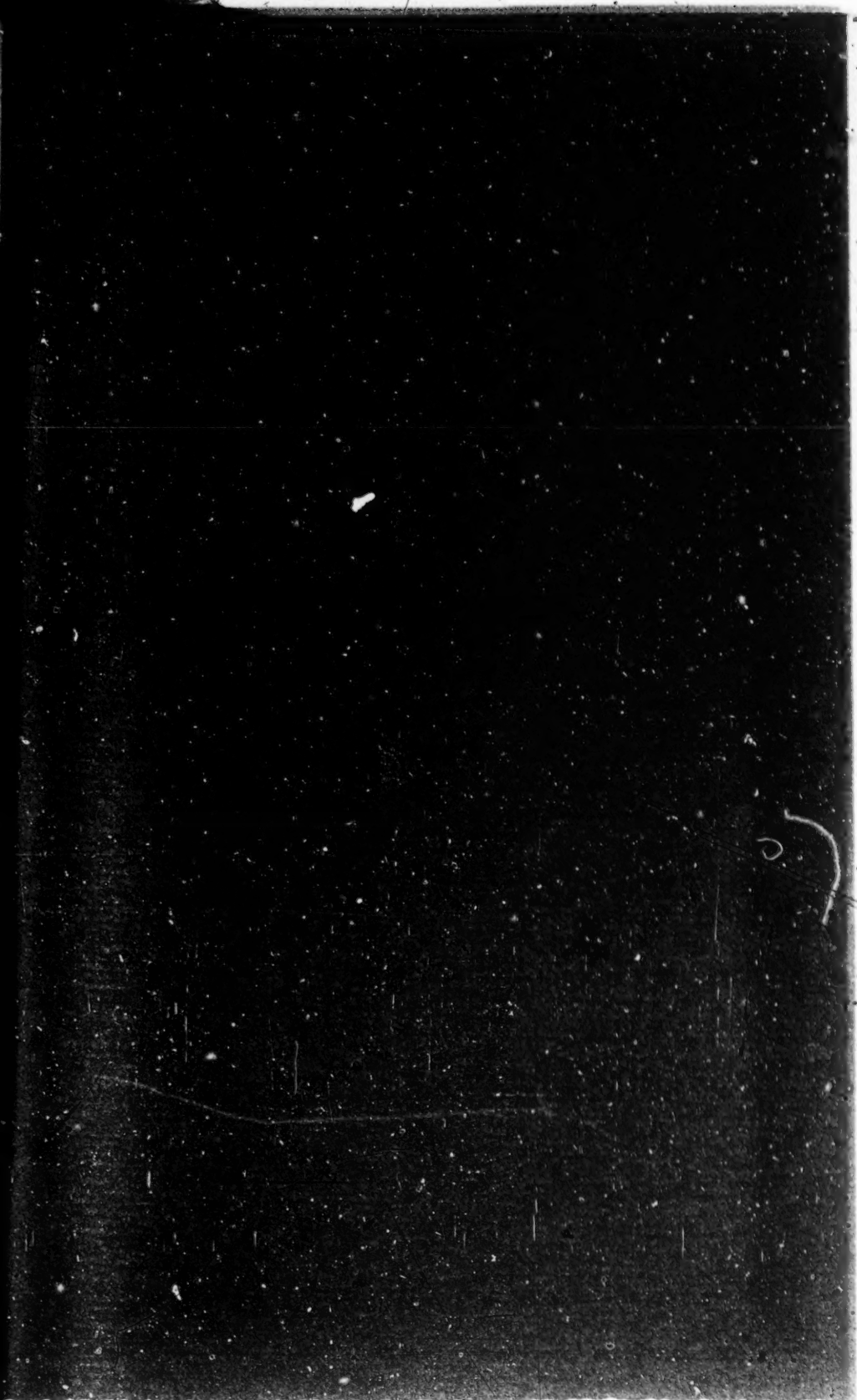
Records of Leaders

I have complete records of more than 200 of the leading executives, directors, organizers and field men of the CIO, which prove that they have been leaders of radical or Communist movements in this country, many of them for the past 10 and 15 years. They work under cover. They are working to gain control of every group which has power and influence. Writers on many newspapers joined the Newspaper Guild. This guild has now been dragged into the CIO by so-called "leaders." The great majority of our American newspaper men would have nothing to do with Communism, but you can see what the purpose is; they are trying to control the press. They organized the Lawyers' Guild in a drive for power in the legal profession, in their efforts to influence the courts. They are trying to organize the teachers in our school system; they have penetrated our colleges; they have recruits in every university in the country. They strike through the educational system to poison the innocent minds of our youth with their Red doctrines. They will stop at nothing. This is a real fight. Their plans have been laid for a long time, they have been building up for years and are well entrenched. They are not interested in the working man but through him they aim to destroy the business and industry of this country,

PLAINTIFFS' EXHIBIT "P-46."

[Advertisement in the Jersey Journal of June 3, 1938, signed "Frank Hague" and captioned "Mayor Hague's Appeal to the People." In the body appears the following:]

"Those of our people who cannot parade are invited to come and stand on the sidelines with an American Flag which will be supplied by the Committee of Veterans. This issue will determine whether Communism or Americanism will prevail in Jersey City. Your presence will be notice to the whole country that Jersey City is one of the greatest American cities in the Nation."



DEFENDANTS' EXHIBIT "D-1."

[Newspaper clipping from Jersey Journal—newspaper circulating in Jersey City, dated December 18, 1937, heading: "C. I. O. Leaders talk of 'Machine Guns' "—"Ernst bitter in Attack on Mayor Hague."—"Counsel Threatens New Invasion of Jersey City in Defense of Ban on C. I. O." The body of the article contains, among other things, the following:]

"Washington.—Secretary of Labor Perkins and Charles Fahey, General Counsel of the National Labor Relations Board, listened today as Morris Ernst, Counsel for the C. I. O. pleaded with the National Lawyers' Guild to join in a fight on 'legal dictatorship' in Jersey City to vote Hague down". Mr. Ernst is quoted as having said:

" 'You can write all the statutes you please, but if a mayor like Hague can tear them up you must go on a new tack. So far there has been no evidence of machine guns and I hope there will be none because I know we would be playing into the hands of Mayor Hague.

" 'Hague doesn't want unions in Jersey City because he wants to get the sweatships in there. If any employers hear these words I want to warn them, Hague's word is no damned good!

" 'A fight against the Jersey City situation is far more important than any other movement. It is the battle of every group. If Hague can tear up the Constitution and Bill of Rights now against the CIO, another mayor can do it against the American Federation of Labor or anyone else.

" 'You can take Hague as a symbol of dictatorship in the United States, and we've got to cut Hague down right now.' "

DEFENDANTS' EXHIBIT "D-3."

[Jersey City Bureau of Identification photograph and data re Bernard Weinkrantz.]

DEFENDANTS' EXHIBIT "D-4."

[Jersey City Bureau of Identification photograph and data re Charles Hansen.]

DEFENDANTS' EXHIBIT "D-5."

[Jersey City Bureau of Identification photograph and data re Jesse F. Suttka.]

DEFENDANTS' EXHIBIT "D-6."

[Jersey City Bureau of Identification photograph and data re Benjamin Field.]

DEFENDANTS' EXHIBIT "D-7."

[Jersey City Bureau of Identification photograph and data re Patrick B. Whelan.]

DEFENDANTS' EXHIBIT "D-8."

[Hudson County Bureau of Criminal Identification records on above.]

DEFENDANTS' EXHIBIT "D-9."

[National Republic Magazine of June 1938, at p. 28, showing photographs with this legend: "Congressman Jerry O'Connel, with Communist Herbert Benjamin and Socialist David Lasser confer on possible action against Mayor Hague of New Jersey."]

DEFENDANTS' EXHIBIT "D-10."

[Book of reports of the American Fund for Public Service known as "Garland Fund" setting forth the monies contributed by said fund as gifts and loans to various organizations between 1924 and 1934 inclusive, including the following: "Daily Worker"; "New Masses"; Brookwood Labor College; American Civil Liberties Union; National Association for Advancement of Colored People; Publication of Studies on American Imperialism; League for Indian Democracy; Federated Press; International publishers; Mooney-Billings Campaign; Southern Summer School for Women; Joint Action Committee; Paterson Silk Workers; International Ladies Garment Workers Union; Associated Textiles, Inc, Minneapolis; International Labor Defense; Russian Reconstruction Farms; Unity House, I. L. G. W. U.; League for Mutual Aid; Independent Shoe Workers Union; Il Martello Book Store; Seattle Labor College; American Indian Defense Committee; Max Eastman; Washington Conciliation Committee; Series of Studies on Russia; Art Shields and Esther Lowell—correspondence; Revolutionary Age; Labor Research Association; American Shoe Workers Protective Union; American Student Delegation to Russia; East Side Educational Center; Joint Board Furriers Union; Lenox Building, Washington, D. C.; Manumit School; New Republic, New York City; Il Nuovo Mondo; Vanguard Press, and also setting out the Bail issued by National Surety Company, cash bail funds and total losses and expenditures in connection with bail funds.

The said report also has printed therein the names of the Board of Directors and officers, as follows:]

BOARD OF DIRECTORS.

Roger N. Baldwin
Robert W. Dunn
Morris L. Ernst
Lewis S. Gannett
Benjamin Gitlow
Clinton S. Golden
James Weldon Johnson
Freda Kirchwey
Clarina Michelson
Norman M. Thomas

Officers

Roger N. Baldwin, President
Freda Kirchwey, Vice President
Robert W. Dunn, Secretary
Morris L. Ernst, Treasurer.

DEFENDANTS' EXHIBIT "D-11."

[Photostatic copy of several pages from "New Masses" of May 1932, which was offered for affidavit of ownership, which said affidavit is, as follows:]

"STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, Of New Masses, published monthly at New York, N. Y., for October 1, 1930.

"State of New York: County of New York.

Before me, a Notary in and for the State and County aforesaid, personally appeared, Frances Strauss, who, having been duly sworn according to law, deposes and says that she is the Business Manager of the New Masses, and that the following is, to the best of her knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business manager are:

Publisher New Masses, Inc., 63 West 15 Street, New York City, Editorial Board: R. Evans, M. Gold, H. Gellert, L. Lozowick, M. Olgin, Managing Editor: Walt Carmon, 63 West 15 Street, N. Y. C., Business Manager; Frances Strauss, 63 West 15 St., N. Y. C.

2. That the owner is: The American Fund for Public Service, 2 West 13 St., N. Y. C., James Weldon Johnson, Pres., 2 West 13 St., New York City; Rob't. W. Dunn, Sec'y, 2 West 13 St., New York City; Morris L. Ernst, Treas., 2 West 13 St., New York City.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or

more of total amount of bonds, mortgagees and other securities are: None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner, and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by her.

Sworn to and subscribed before me this 24th day of March, 1932.

FRANCES STRAUSS, Business Manager.
Wm. E. Wimpey, Notary Public
(My commission expires March 30, 1933)

DEFENDANTS' EXHIBIT "D-14."

[Booklet published by National Republic Magazine captioned "Leninism—Lewisism", from which counsel for defendants read excerpts into the record.]

DEFENDANTS' EXHIBIT "D-15."
Clipping From "Newark Evening News," Tuesday, November 23, 1937.

CIO Prepared For Invasion

Mass Drive by 3,000 to Be Launched Monday in Jersey City

Final plans for their invasion of Jersey City were completed last night by New Jersey CIO leaders. A mass organization drive by 3,000 CIO representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city.

Aside from field organizers of international unions, more than 2,800 volunteers will distribute leaflets in an area bounded by Bay and 17th streets, Jersey City. Of that number more than 2,000 will be from the International Maritime Union.

Other organizations which will send groups include the Civil Liberties Union, International Labor Defense, Workers Defense League and the Hudson County Committee for Civil Rights.

Many Arrests Expected

Those participating in the drive will assemble in Jersey City at a given point. They will then march to the city's largest depts. where leaflets will be handed out. Many arrests are expected in view of the city's ordinance prohibiting distribution of leaflets.

William J. Carney, CIO regional director and leader of the drive, will go to Washington tomorrow to confer with a member of the Senate Civil Liberties Committee. Carney said a member of the committee will be in Jersey City Monday as an observer.

"Showdown with Hague"

Carney added:

"Our plans for a showdown between CIO and I-Am-The-Law-Hague have been completed. We will go to Jersey City to organize in a peaceful manner.

which stockholders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner, and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by her.

Sworn to and subscribed before me this 24th day of March, 1932.

FRANCES STRAUSS, Business Manager
Wm. E. Wimpey, Notary Public
(My commission expires March 30, 1933)

DEFENDANTS' EXHIBIT "D-14."

[Booklet published by National Republic Magazine captioned "Leninism—Lewisism", from which counsel for defendants read excerpts into the record.]

organization drive by 3,000 CIO representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city.

Aside from field organizers of international unions, more than 2,800 volunteers will distribute leaflets in an area bounded by Bay and 17th streets, Jersey City. Of that number more than 2,000 will be from the International Maritime Union.

Other organizations which will send groups include the Civil Liberties Union, International Labor Defense, Workers Defense League and the Hudson County Committee for Civil Rights.

Many Arrests Expected

Those participating in the drive will assemble in Jersey City at a given point. They will then march to the city's largest plants where leaflets will be handed out. Many arrests are expected in view of the city's ordinance prohibiting distribution of leaflets.

William J. Carney, CIO regional director and leader of the drive, will go to Washington tomorrow to confer with a member of the Senate Civil Liberties Committee. Carney said a member of the committee will be in Jersey City Monday as an observer.

"Showdown with Hague"

Carney added:

"Our plans for a showdown between CIO and I-Am-The-Law-Hague have been completed. We will go to Jersey City to organize in a peaceful manner. Whether this will be possible in the face of denials of civil rights in that city I am unable to say at this time.

"Workers in Hudson County have even been denied the right to strike. Police of Jersey City have tried to stop picketing without a court injunction, so easily obtained in Hudson County.

"When our organizers enter Jersey City they are stopped by police, threatened and searched. The contents of their cars are strewn over the highway. At our organization meetings police even threaten the workers wot attend. Hague has gotten away with this to long.

"The acts of various Jersey City officials may very well come within the scope of prosecution and indictment by the Federal Government. Various acts committed by Jersey City officals are crimes under the United States Criminal Code, punishable by a heavy fine and imprisonment up to ten years.

"Section 51 of the code prohibits conspiracy to injure persons in exercise of civil rights. Section 7 of the Wagner Act says employees shall have the right to join or assist labor organizations and to engage in concerted activities for mutual aid and protection.

"Hague may be the law in Jersey City, but he is not the law of the country."

NORMAN THOMAS GIVES COMMUNIST SALUTE

Socialists and Communists celebrated May Day in New York and prominent among the participants was Norman Thomas, a Socialist leader, who is shown (center) giving the Communist clenched fist salute and singing the "Internationale" along with the other Reds and Pinks surrounding him.

DEFENDANTS' EXHIBIT "D-16."
Newspaper Photograph From "Jersey Journal," May 2, 1938.

DEFENDANTS' EXHIBIT "D-17."

[Photostatic copy of clipping from New York Times of May 24, 1937, captioned " 'Red' C. I. O. Assailed In A. F. of L. Parley".]

DEFENDANTS' EXHIBIT "D-18."

[Clipping from New York American March 9, 1937, captioned: "C. I. O. Drive Hatched In Moscow, Green says".]

DEFENDANTS' EXHIBIT "D-19."

[Clipping from New York Times June 7, 1937, captioned: "Moscow Puts Hopes In C. I. O., Green says".]

DEFENDANTS' EXHIBIT "D-20."

[Clipping from New York Times March 29, 1937, captioned: "A. F. of L. Brands Sit-in Strike Illegal Property Seizure; Chrysler Deadlock Holds".]

DEFENDANTS' EXHIBIT "D-21."

[Clipping from New York Times January 31, 1937, captioned: "Court Test Today On Flint Sit-Down; Men In Plants Arm".]

DEFENDANTS' EXHIBIT "D-22."

[Clipping from New York Times dated January 15, 1937, captioned: "Four Thousand At Flint Ask Return To Work". "Mass meeting hears auto strike laid to minority of 5% and prays for peace".]

DEFENDANTS' EXHIBIT "D-23."

[Clipping from New York Times of March 4, 1937, captioned "Flint Prepares For New Fights as Crowds Pour Into Strike Zone".]

DEFENDANTS' EXHIBIT "D-24."

[Two clippings from New York Herald Tribune, one dated February 3, 1937, "C. I. O. Program Called Path To 'Sovietization'" (referring to a statement of Louis K. Comstock, president of the Merchants Association of New York), and the other captioned: "May Day—1937", being a letter to the editor by one Edward H. Weston, whoever he may be.]

DEFENDANTS' EXHIBIT "D-25."

[Clipping from New York Times of April 24, 1937, captioned: "Reports Reds In U. S. Are Supporting C. I. O.", referring to statement alleged to have been published by M. J. Olgin, New York correspondent of Pravda.]

DEFENDANTS' EXHIBIT "D-26."

[Clipping from New York Times of December 31, 1936 captioned: "Sit-down Close Four Big Plants of General Motors".]

DEFENDANTS' EXHIBIT "D-27."

[Certified copy of a report presented to Congress on January 17, 1931, by a Special Committee to investigate Communistic activities in the United States, referred to in the record as the "Fish Report". The following excerpts from this report are printed in lieu of the full report]:

"AMERICAN CIVIL LIBERTIES UNION.

The American Civil Liberties Union is closely affiliated with the communist movement in the United States, and fully 90 per cent of its efforts are on behalf of communists who have come into conflict with the law. It claims to stand for free speech, free press, and free assembly; but it is quite apparent that the main function of the A. C. I. U. is to attempt to protect the communists in their advocacy of force and violence to overthrow the Government, replacing the American flag by a red flag and erecting a Soviet Government in place of the republican form of government guaranteed to each State by the Federal Constitution.

Roger N. Baldwin, its guiding spirit, makes no attempt to hide his friendship for the communists and their principles. He was formerly a member of the I. W. W. and served a term in prison as a draft dodger during the war. This is the same Roger N. Baldwin that has recently issued a statement "that in the next session of Congress our job is to organize the opposition to the recommendations of the congressional committee investigating communism." In his testimony before the committee he admitted having said at a dinner held in Chicago that "The Fish Committee recommendations will be buried in the Senate." Testifying on force and violence, murder, etc., the following is quoted:

The Chairman. Does your organization uphold the right of a citizen or alien—it does not make any difference which—to advocate murder?

Mr. Baldwin. Yes.

The Chairman. Or assassination?

Mr. Baldwin. Yes.

The Chairman. Does your organization uphold the right of an American citizen to advocate force and violence for the overthrow of the Government?

Mr. Baldwin. Certainly; in so far as mere advocacy is concerned.

The Chairman. Does it uphold the right of an alien in this country to urge the overthrow and advocate the overthrow of the Government by force and violence?

Mr. Baldwin. Precisely on the same basis as any citizen.

The Chairman. You do uphold the right of an alien to advocate the overthrow of the Government by force and violence?

Mr. Baldwin. Sure; certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited.

The American Civil Liberties Union has received large sums from the Garland fund, of which Roger N. Baldwin is one of the directors. During the trial of the communists at Gastonia, not for freedom of speech, of the press, or assembly, but for a conspiracy to kill the chief of police, of which seven defendants were convicted, the A. C. L. U. provided bail for five of the defendants, amounting to $28,500, which it secured from the Garland fund. All of the defendants convicted, jumped their bail and are reported to be in Russia. The $28,500 bail was forfeited, including $9,000 more advanced by the International Labor Defense.

A committee of the New York State Legislature, back in 1928, reached the following conclusion in regard to the American Civil Liberties Union:

"The American Civil Liberties Union, in the last analysis, is a supporter of all subversive movements; its propaganda is detrimental to the interests of the State. It attempts not only to protect crime but to encourage attacks upon our institutions in every form."

Your committee concurs with the above findings.

The principles of free speech, free press, and free assembly are worthy of an organization that stands for our republican form of government, guaranteed by the Constitution, and for the ideals of Washington, Jefferson, and Lincoln, instead of an organization whose main work is to uphold the communists in spreading revolutionary propaganda and inciting revolutionary activities to undermine our American institutions and overthrow our Federal Government.

. . . . . .

International Labor Defense

(Also referred to under "Activities in Industry")

The International Labor Defense was formed in 1925 with headquarters in Chicago, as a communist organization to defend class-war prisoners and for the repeal of all sedition and criminal syndicalist laws. It later moved to New York City. It provides legal aid to all communists arrested for revolutionary activities and helps to secure bail for them. In addition, its program is as follows:

(1) Defense of foreign-born workers and against deportation.

(2) Gives publicity to persecution of workers.

(3) Fights for the right of workers to organize for self-defense.

(4) Support to prisoners and families.

The active head of the International Labor Defense is J. Louis Engdahl, who holds the position of secretary general. He is an American citizen and a gradu-

ate of the University of Minnesota. He is one of the most aggressive and active communists in the United States. He has been to Russia several times and has served on the central executive committee of the Communist Party of America in this country. Last November he ran on the communist ticket in New York for lieutenant governor. At one time he was editor of the Daily Worker. In addition to being secretary of the International Labor Defense, he is the editor of the Labor Defender, a monthly communist magazine and the official organ of the International Labor Defense, with a circulation of over 2,000. It is revolutionary, outspoken in appeal in behalf of communist principles against American institutions.

. . . . . .

THE GARLAND FUND.

The American Fund for Public Service (Inc.), located at 2 West Thirteenth Street, New York City, generally known as the Garland Fund, has helped to keep alive the American Civil Liberties Union, International Labor Defense, the communist, legal defense committee headed by J. Louis Engdahl, the Workers' Communist School in New York City, and the Pioneer camps, as well as the Daily Worker and many other communist and advanced socialist and radical and ultra-radical organizations. This fund, in an original amount of about $900,000, was established in 1922 by a rich son of a Massachusetts industrialist and increased in amount, due to enhanced values of the stock—First National Bank of the City of New York—held by the fund, up to nearly $2,000,000. Of this sum, approximately $600,000 is left. The directors of the Garland Fund are: Roger Baldwin, Robert W. Dunn, Morris L. Ernst, Elizabeth Gurley Flynn, Lewis S. Gannett, Benjamin Gitlow, Clinton Golden, James Weldon Johnson, Freda Kirchway, Clarina Nichelson, Scott Near-

ing and Norman H. Thomas. The following is a partial report of the loans and expenditures from the Garland fund to communist organizations (approximated):

The Daily Worker (official organ of the Communist Party of the United States)	$ 17,600.
Passaic strike funds (communist strike)	25,318.
Passaic bail bonds deposited for communist strikers	45,000.
Workers' School at New York	11,122.
International Labor Defense	14,850.
Sacco-Vanzetti committee	17,000.
All-American Anti-imperialist League	1,000.
Novy Mir (Russian communist weekly newspaper)	500.

The following "loans" were made to communist organizations (it will be noted that it has been the custom to cancel a greater part of such "loans" after a few years):

The Daily Worker	$ 31,375.
International Labor Defense	35,600.
Sacco-Vanzetti committee	5,000.
All-American Anti-imperialist League	100,000.
Novy Mir	3,000.
Trade Union Educational League (now liquidated)	1,500.
Young Workers' League (now Young Communist League)	3,200.

The above figures were taken from the 1928 report of the American Fund for Public Service, which is the last report filed by the fund, given in full in part 1, volume 4, of the committee hearings."

. . . . . .

"The following is part of the testimony of William Z. Foster, twice candidate of the Communist Party for President of the United States, before the committee, in which he explains some of the principles of his party:

The Chairman. Would you mind stating to the committee the aims and principles of the Communist Party?

Mr. Foster. The aims and principles of the Communist Party, briefly stated, are to organize the workers to defend their interests under the capitalist system and to eventually abolish the capitalist system and to establish a workers and farmers government.

The Chairman. Now, can you tell us more definitely if the principles of the Communist Party, as advocated in this country, or anywhere else, are the same?

Mr. Foster. Yes.

The Chairman. Does the Communist Party advocate the confiscation of all private property?

Mr. Foster. The Communist Party advocates the overthrow of the capitalist system and the confiscation of the social necessities of life; that is, the basis industries and other industries for producing the means of livelihood for the people. By the property of individuals, personal belongings, and so on, no; that is, in the sense of their personal property.

. . . . . .

The Chairman. Does your party advocate the abolition and destruction of religious beliefs?

Mr. Foster. Our party considers religion to be the opium of the people, as Karl Marx has stated, and we carry on propaganda for the liquidation of these prejudices amongst the workers.

. . . . . .

The Chairman. Have you been to Russia?

Mr. Foster. Yes. Eight or nine times.

The Chairman. You are familiar, then, with the workings of the Communist Party in Russia?

Mr. Foster. Reasonably.

The Chairman. Well, can members of the Communist Party in Russia be married in the church and maintain religious beliefs of that nature, and practice them?

Mr. Foster. My opinion is that a member of the Communist Party of the Soviet Union who would be married in a church would not be of any value to the Communist Party.

The Chairman. Could he maintain his membership in the party?

Mr. Foster. He would not.

The Chairman. He would be put out of the party?

Mr. Foster. Eventually, if not for that specific act.

The Chairman. Would it not be the same in this country?

Mr. Foster. As I stated before, workers who would be so imbued with religious superstitions that they would be married in a church would be of no value to the Communist Party.

The Chairman. And the same thing would happen to them in this country that happens to them in Russia?

Mr. Foster. Of course.

. . . . . .

The Chairman. Do the communists in this country advocate world revolution?

Mr. Foster. Yes; the communists in this country realize that America is connected up with the whole world system, and the capitalist system displays the same characteristics everywhere—everywhere it makes for the misery and exploitation of the workers—and it must be abolished, not only on an American scale but on a world scale.

. . . . . .

The Chairman. They are opposed to our republican form of government?

Mr. Foster. Most assuredly.

The Chairman. And they desire to overthrow it through revolutionary methods?

Mr. Foster. I would like to read from the program of the Communist International at this point. The Communist International Program says——

Mr. Bachmann. From what page are you reading?

Mr. Foster. Page 34. "The conquest of power by the proletariat does not mean peaceful capturing of ready-made bourgeois state machinery by means of a parliamentary majority. The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory property and political domination. Like the feudal nobility of the past, the bourgeoisie can not abandon its historical position to the new class without a desperate and frantic struggle; hence the violence of the bourgeoisie can only be suppressed by the stern violence of the proletariat.

The Chairman. Just what is the Third International?

Mr. Foster. The Communist International is the world party of the communist movement.

The Chairman. Is the Communist Party of the United States connected with it?

Mr. Foster. It is.

. . . . . .

The Chairman. Now, if I understand you, the workers in this country look upon the Soviet Union as their country; is that right?

Mr. Foster. The more advanced workers do.

The Chairman. Look upon the Soviet Union as their country?

Mr. Foster. Yes.

The Chairman. They look upon the soviet flag as their flag?

Mr. Foster. The workers of this country and the workers of every country have only one flag and that is the red flag. That is the flag of the proletarian revolution; it was also, incidentally, the flag of the American Revolution in its earlier stages. The red flag has been the flag of revolution for many years before the Russian revolution.

The Chairman. Could not you answer a little more definitely and specifically whether they owe any allegiance to the American flag?

Mr. Foster. I have stated my answer.

The Chairman. I do not want to force you to answer if it embarrasses you, Mr. Foster.

Mr. Foster. It does not embarras me at all. I stated very clearly the red flag is the flag of the revolutionary class, and we are part of the revolutionary class.

. . . . . .

"The committee is convinced that the surest and most effective way of combating communism in the United States is to give the fullest possible publicity to the fundamental principles and aims of the communists, which are the same throughout the world, as they are not likely to prove acceptable to any considerable number of American citizens, unless camouflaged by either extraneous issues, such as unemployment insurance.

. . . . . .

"The following is a definition of communism, a world-wide political organization advocating: (1) Hatred of God and all forms of religion; (2) destruction of private property, and inheritance; (3) absolute social and racial equality; promotion of class hatred;

(4) revolutionary propaganda through the Communist International, stirring up communist activities in foreign countries in order to caus strikes, riots, sabotage, bloodshed, and civil war; (5) struction of all forms of representative or democratic governments, including civil liberties, such as freedom of speech, of the press, of assembly, and trial by jury; (6) the ultimate and final objective is by means of world revolution to establish the dictatorship of the so-called proletariat into one world union of soviet socialist republics with the capital at Moscow."

DEFENDANTS' EXHIBITS "D-28" AND "D-29."

[Pleadings in the mandamus proceedings brought by Norman H. Thomas, Relator, against Daniel Casey, Director of Public Safety of Jersey City, Respondent, in the New Jersey Supreme Court, consisting of alternative writ of mandamus and return to said alternative writ of mandamus.]

[fols. 83-85] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity

COMMITTEE FOR INDUSTRIAL ORGANIZATION et al., Plaintiffs,

v.

FRANK HAGUE et al., Defendants

Stenographer's Minutes

APPEARANCES

Spaulding Frazer, Esq., David Stoffer, Esq., Morris L. Ernst, Esq., of the New York Bar, for the Plaintiffs.

Hon. James A. Hamill, Joseph Glavin, Esq., Edward O'Mara, Esq., Charles E. Hershenstein, Esq., for the defendants.

Before Hon. William Clark, Judge, at the Post Office Building, Newark, N. J., on Thursday, May 26, 1938 at 10:30 A. M.

COLLOQUY

The Clerk: Is the C. I. O. case ready?

Mr. Frazer: Yes.

The Clerk: Ready, both sides?

Mr. Hamill: We are ready.

The Court: Just a minute, Mr. Hamill; I have some criminal cases; I will dispose of them first, I think. That will make it more convenient.

* * * * * * *

[fol. 86] The Court: All right, Mr. Hamill; I interrupted you to take those cases.

Mr. Hamill: Your Honor please, I wish to address to this honorable court a motion. This is a bill of complaint comprising nineteen pages of typewritten matter, exclusive of twenty-three pages of exhibits.

The Court: I have it before me.

Mr. Hamill: Yes, sir; containing copies of ordinances and letters purporting to have been written and to have passed between the attorneys for the plaintiffs and some of

them and certain officers of the city. The bill, after setting out in the first five paragraphs a statement of who the plaintiffs and the defendants are, proceeds in the 6th and 7th paragraphs to lay the necessary allegations bringing them within the right to be here in the United States Court.

If your honor desires me to do so, I shall give to the court a summary of what is contained in the bill. It sets out various grievances, wrongs or injuries alleged to have been suffered by the plaintiffs at the hands of the defendants, who are, as the court knows, the Mayor of Jersey City, the Director of Public Safety and the Chief of Police of Jersey City. Then the plaintiffs set out certain requests in the prayer of their bill, and I propose to go over the prayer of the bill, making upon each of the paragraphs and sub-paragraphs containing the prayer, such observations or comments or suggestions as I deem proper at this time. Of course, I might say right now that we deny that we have ever done the things alleged to have been done by us in the various paragraphs of the bill. We have done that in our answer and that denial is of record.

The Court: I have the answer.

Mr. Hamill: But in any event the complainants or plaintiffs, as they call themselves in the bill, the complainants [fol. 87] could not obtain any more relief than they pray for in the prayer of their bill.

Now, I call your attention to subdivision A of the prayer of the bill. It reads:

"They pray that the defendants, their agents, servants, employees, officers and subordinates under the direction, supervision or control of the defendants or any of them, be perpetually restrained and enjoined by the injunction of this court as follows:

"(A) From interfering in any manner with the free access by plaintiffs or by any persons acting in sympathy or in concert with plaintiffs to, upon and through the public streets, highways and thoroughfares of Jersey City."

Now, we have not interfered and will not interfere with the free access by the plaintiffs or by any persons acting in sympathy or in concert with them, to, upon and through the public streets, highways and thoroughfares of Jersey City, and never did so long as they exercised this constitutional right in a legal and orderly manner.

The Court: That is interference with the public streets, is that that paragraph?

Mr. Hamill: Yes, sir. Sub-section C,—I shall take them, not exactly seriatim, but take them in the order in which, in my judgment, I can present them the better to this court. Sub-division C, "from interfering in any manner with any of the plaintiffs in the distribution by them to persons willing to receive the same, on the public streets and highways of Jersey City, of literature concerning the Committee for Industrial Organization or the National Labor Relations Act, or announcing meetings to be held under the auspices of plaintiffs or the Committee for Industrial Organization."

The Court: That is the distribution of literature?

Mr. Hamill: Yes, sir.

The Court: I am following it.

[fol. 88] Mr. Hamill: And this is my observation: This paragraph or sub-paragraph has to do with the distribution of literature and circulars on the public streets of Jersey City. Up to the time when the United States Supreme Court rendered its decision in the Griffin case, Jersey City did, for reasons it considered sound and proper——

The Court: I have the Griffin case here.

Mr. Hamill: —prevent,—yes, sir, the distribution of circulars without a permit. This was done under the provisions of an ordinance passed as far back as January 22, 1924, and this ordinance was upheld by the Supreme Court of this state. When, however, the case against the Town of Griffin in Georgia was decided by the United States Supreme Court, Jersey City immediately acceded to it, and since that time there has been no interference with the distribution of literature and will not be, so long as it is carried on in an orderly manner, and no attempt is made to force pamphlets, circulars or literature upon persons unwilling to receive such literature. Therefore this matter is disposed of.

The Court: The words of the Supreme Court are, Mr. Hamill——

Mr. Hamill: Sir?

The Court: The words of the Supreme Court are, as you probably know: "with the maintenance of public order, by involving disorderly conduct, molestation of inhabitants or the misuse and littering of the streets."

Mr. Hamill: And of course we obey that decision and will obey it and have never broken it after the announcement or promulgation of the decision, and if a permit was required

it was in accordance with the provisions of an ordinance afterwards declared to be invalid by the Supreme Court by implication in passing upon the ordinance in the Griffin case.

[fol. 89] Sub-division D: Now, this sub-division asks that the defendants be restrained from intimidating or interfering in any way with any owner or lessee of meeting places or halls in the City of Jersey City, for the purpose of preventing such owner or lessee from permitting the use of any such meeting place or hall by plaintiffs for meetings or for any other lawful purpose; and from intimidating or interfering in any way with any owner or lessee of any meeting place or hall in Jersey City for the purpose of coercing such owners or lessee, directly or indirectly, to refuse to allow any of the plaintiffs the use of their premises for any lawful purpose.

The Court: That is the private hall.

Mr. Hamill: This is the part of the prayer referring to meetings in halls. That is something we are satisfied cannot be proved by the plaintiffs for the simple reason, and of course there is merely my statement for it, which we believe we will sustain, that we have never done such a thing. However, let it be stated now, that Jersey City has not and will not intimidate or interfere in any way with any other or lessee for the purpose of coercing such owners or lessees directly or indirectly from holding a meeting. And as a matter of fact this right was upheld by Vice Chancellor Fielder in a decision which he rendered in a similar case. The defendants recognize the right of——

The Court: I have that here.

Mr. Hamill: —orderly assemblage for any lawful purpose.

The Court: I have Vice-Chancellor Fielder's decision.

Mr. Hamill: Yes, sir, "in other than public places, and will not in any way interfere with such meetings as long as a breach of the the peace is not caused thereby." In order to clear the atmosphere of any charges which have been pretty freely made of late on this subject, I want it to be clearly understood that we deny, as we have already denied, that we have ever done this.

[fol. 90] Now, sub-division E, Press: That we be enjoined from seizing or destroying any circulars or other written or printed matter.

The Court: That is the same thing.

Mr. Hamill: Or emblems in the possession of plaintiffs or any other persons acting in sympathy or concern with plaintiffs or any of them.

The Court: That is the same——

Mr. Hamill: If such a thing has been done, it has been done without the knowledge or consent of the authorities or these defendants and we concede that this should not be done.

The Court: That is under distribution.

Mr. Hamill: "Subdivision F, Press: That the defendants be enjoined from interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs in the holding of any peaceful meetings organized by plaintiffs in the City of Jersey City."

We have never interfered with the holding of any peaceful meetings in any public hall or in any place other than a public place, provided a breach of the peace was not caused thereby, and will continue that policy in the future. This statement has no reference to meetings, of course, in public places or public streets, for which a permit is, and will be, unless this honorable court should decide otherwise, required by the authorities of Jersey City under the ordinance.

"Sub-division G, Press: That the defendants be enjoined from interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs in their peaceful conduct of organization activities within the City of Jersey City." We have no objection and never have had any objection to the carrying on peacefully of organization activities within the City of Jersey City. This has been and will continue to be our policy.

[fol. 91] Sub-division H is a general clause praying that we, "the defendants be restrained from ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person or persons to commit any of the acts enjoined by this honorable court."

The Court: Then, as I understand it, Mr. Hamill, on five points, as I have noted them; Jersey City, represented by you, is willing to consent to an injunction?

Mr. Hamill: Well, we will either consent to an injunction or to a stipulation on the record by counsel to whatever, in your honor's judgment should be the appropriate order or remedy in this court for the situation which I have brought to the attention of the court, as stated in the bill of complaint.

The Court: Well, as it would have to be an official pronouncement of the court, I should suppose it would have to come in the form of a court order.

Mr. Hamill: Now, your honor has called attention to the section or sub-division or sub-paragraph relating to meetings in public streets. May I make some observations on that? I have saved it for the last, because it seems to us to be the least meritorious question involved in this equity suit.

The Court: Well, you mean disputed question, rather than meritorious?

Mr. Hamill: Beg pardon?

The Court: Disputed question, you mean rather, don't you?

Mr. Hamill: Well, if the court disagrees with me, of course I will not press the point and I will accept the word "disputed." Of course we do dispute it.

"B: From interfering—I am reading now sub-division or sub-paragraph B of the prayer—"from interfering in any manner with any of the plaintiffs in the holding of peaceful meetings organized by them or under their aus- [fol. 92] pices for the purpose of discussing the work of the Committee for Industrial Organization, and the organization in Jersey City of trade unions to be affiliated with such Committee."

The Court: Mr. Frazer, is that B,—it is D, isn't it?

Mr. Frazer: D was the one you omitted.

Mr. Hamill: B is the one.

Mr. Frazer: D was the one you omitted.

Mr. Hamill: Yes, requiring permits for meetings on the public street.

The Court: This is the one, paragraph B.

Mr. Frazer: I think it is B, Mr. Hamill.

Mr. Hamill: Yes, I do too. Thank you. There is not the slightest doubt about the fact that Jersey City demands that a permit to hold such meetings be first obtained from the Director of Public Safety. This is in accordance with an ordinance adopted April 15, 1930 by the City Commission of Jersey City, and that ordinance requires that application be made to the Director of Public Safety, and he is authorized to refuse to issue the permit—I am reading from the ordinance—"when, after investigation of all the facts and all circumstances pertaining to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that permit shall only be refused for

the purpose of preventing riots, disturbances or disorderly assemblage."

This, we contend is a proper, legal, valid, sound and reasonable exercise of the police power. This vests the Commissioner of Public Safety with the right to refuse the permit when and in his reasonable discretion, properly used, he believes that riots, disturbances or disorderly assemblage would be the result of his issuing it.

The Court: Might I interrupt here, Mr. Hamill? Does it provide for public hearings with respect to the issuing of a permit?

[fol. 93] Mr. Hamill: Sir?

The Court: Does it provide for public hearings with respect to the issuing of a permit?

Mr. Hamill: No, it does not provide for public hearings. We shall submit a copy of this ordinance to your Honor so that your Honor will be able to read it in full.

This, we contend, is a matter cognizable not in a court of equity, but in a court of law. We contend that anyone aggrieved by the decision or determination or refusal on the part of the Director of Public Safety to grant the requested permit, has a full, adequate, complete remedy at law by mandamus or by certiorari; and that the fact that he does possess this remedy excludes him from the right to come in and ask a remedy in a court of equity. As a matter of fact, the plaintiffs or their,—shall I say their "allies, or coadjutors, or affiliates" have recognized by implication this very thing, because in the case of Mr. Thomas, Mr. Vanderbilt, his attorney, notified the Law Department of Jersey City that he would apply to the Chief Justice for a writ of certiorari to test the right of the Director of Public Safety to refuse, as he did refuse, the issuance of a permit to Mr. Thomas. However, I am not attempting to argue this point at length or at the present time. I want to call the attention of the court to the fact that there is not a great deal of doubt as to what are the facts in this bill, or I shall put the matter this way: that the facts necessary to enable the court to reach a decision are practically such facts as would not be denied, and they can be easily admitted.

The Court: You mean the facts, now, Mr. Hamill, with respect to public meetings?

Mr. Hamill: Oh, yes, the facts with respect to public meetings. There isn't any doubt but that applications have been

made, and that we have refused the permit. As a matter of fact, I think that all of those facts are matters of record, [fol. 94] letters by the attorneys of the various parties and letters back from either the Corporation Counsel or the Director of Public Safety; so that there could not be any doubt and will not be any doubt about these facts. And therefore the motion which I now desire to address to the court is this one; that this matter be laid over until such reasonable day as to your honor may seem meet, to enable us and the complainants to file briefs with your honor covering the situation regarding the issuance of permits to hold meetings in the public streets covering the sub-paragraph of the bill relating to that situation.

We will argue, of course, that the complainant has no right in a court of equity, and shall set up such other contentions as we think should be brought to the attention of the court, not only on that matter, but on all of the other matters stated in the bill. And I shall therefore repeat the motion I have enunciated, by saying that we therefore move that the court grant an adjournment for the purpose of enabling counsel on both sides to submit briefs on the paragraph which deals with the holding of meetings in public streets, and on such other paragraphs of the bill as they may wish to bring to the attention of the court.

The Court: Before we get to that, Mr. Hamill, I think it would be wise to at least submit an order on the undisputed points before we get to the disputed point, that word "disputed" being the word I used. I think it would be as well to submit an order on the undisputed points. Is that agreeable?

Mr. Frazer: Well, I would like to be heard, if your honor please, in reply to what it seems to me is one of the most unusual motions I have ever heard in my practice.

The Court: Well, I haven't passed on it so I don't see that it is necessary for you to be heard on it.

Mr. Frazer: I beg pardon?

[fol. 95] The Court: I say I am now addressing myself to the undisputed points. Then I would be glad to hear you on the other ones.

Mr. Frazer: May I say that Mr Hamill's presentation of what he calls "undisputed" points is not necessarily undisputed on my part.

The Court: "Disputed" point was my word.

Mr. Frazer: Mr. Hamill has made some very broad concessions, I am willing to admit, but that they go the whole way, and that they are satisfactory to the plaintiffs I cannot concede without being heard on it. If your honor is going to say as to the form of the order, should it be granted, I wouldn't object.

The Court: I wouldn't say anything, Dean Frazer, until we see the form submitted. That is why I was suggesting that the form be submitted right now if that is possible?

Mr. Frazer: I can have no objection to the submission of a form, sir.

Mr. Hamill: When you say "right now," you don't mean at this very instant? You mean today or tomorrow, so that we may look it over?

Mr. Frazer: If there is any basis for an adjournment——

The Court: I haven't granted any adjournment yet, Dean Frazer?

Mr. Frazer: No, but I understand Mr. Hamill is suggesting that there should be, and he is going to submit some time in the indefinite future what he conceives should be the form of the final decree; it seems to me before we get to that point, Mr. Hamill should have the paper before the court for consideration, and that means immediately, I should think.

Mr. Hamill: I am putting the matter in the form of a motion because it would be improper to put it to the court [fol. 96] printed, in the form of a suggestion, and if that view which I took the liberty to express to the court, meets with the approval of the court, then we shall at once proceed to draw up the necessary papers; I mean that is my position in the matter.

The Court: As I understand it, Dean Frazer, Mr. Hamill conceded the legal validity of five points—I put them down roughly, and agreed to an order covering those five points; as I understand him, he did not concede the legal validity of the 6th point, namely the question of public meetings. He suggested as to that, that it was a legal question and required briefs and so on; I am not even addressing myself to that at all, because I don't know enough about it, whether it is just a legal question, or whether it is not just a legal question. I am only talking now about the five points which he conceded should be covered by an order of this court.

Mr. Frazer: Now, may I say in that regard—by the way, Mr. Hamill, you were reading,—might I have a copy of your——

Mr. Hamill: Yes, in order to direct my thoughts.

Mr. Frazer: I think it might direct my thoughts, too.

Mr. Hamill: Congressmen, you know, have a habit of being prolix and discursive and I wrote it down.

Mr. Frazer: As to the five points which he concedes, the concession is based upon what, unless I am to disbelieve a large number of witnesses whom I have heard during the past few days, in preparation for this trial, is a complete misstatement of the facts.

The Court: Supposing that to be so, Dean Frazer, does that concern us?

Mr. Frazer: I think very much so.

The Court: In other words, if the order is consented to, does it concern us what preceded it?

Mr. Frazer: Yes, very much sir.

The Court: In what way, unless they are statements in [fol. 97] the form of affidavits which require some kind of action?

Mr. Frazer: The order, I take it, must have something to base itself upon; we are here asking relief in this court upon certain bases of fact which we allege. If those bases of fact——

The Court: I understand Mr. Hamill conceded you the relief. If I am wrong about that——

Mr. Frazer: He doesn't concede me the facts upon which the relief is based; I have a right to prove my case and show the facts upon which we are seeking relief; otherwise if those facts be not true, we have no business to be in this court at all.

Mr. Hamill: Mr. Frazer, may I interrupt you by saying of course we have to admit that sufficient facts are true to base an order complying with the prayer.

Mr. Frazer: It has been rather notorious, may it please the court—if we take Mr. Hamill's paper here, he says "we have never interfered and will not interfere with the free access by plaintiffs or by any person acting in sympathy or in concert with them, to, upon and through the public streets, highways, and thoroughfares of Jersey City." Now, that is the basis, a statement of the fact that they have not done so, is the basis for signing a decree that they shall not do so. We state that our witnesses will

show that that interference has been going on continuously, arbitrarily, and we have a right to prove that, sir. The same is true with the distribution of literature, interference with it, where no possible grounds can be alleged of littering streets, disorderly conduct or anything of the kind; the taking of literature out of automobiles, when it was not even being distributed, the improper searches on the streets, all of those things, interference with personal liberties of the most outrageous character, all of which are denied in this proposition of peace, and an opportunity to show the reason we were in this court, if his proposition be acceded to, denied us.

[fol. 98] The same may be true of the hall-hiring episode; the court can take judicial notice of the fact that in Jersey City there is a very powerful political machine, and that pressure can be brought upon owners in a way which is indefinite, hard to trace, but we can show, we intend to show in our proof, by a series of incidents which are so coincidental in character that the refusals of halls can be based only upon some theory of discrimination and intimidation. So we could go down with the other meetings, interference with the organizational activities and the like, all of which we are prepared to prove by a large number of witnesses.

If we come down, however, to the disputed phase of Mr. Hamill's argument, which he says is in dispute, we are entering the field of law, I take it.

The Court: And fact I should say.

Mr. Frazer: I beg pardon?

The Court: Both law and fact, I should suppose.

Mr. Frazer: Well, as far as he is concerned, it is primarily one of law.

Mr. Hamill: I don't think there will be any difficulty as to the facts; there will be no difficulty as to what actually took place.

Mr. Frazer: I understand he is now coming in to contest the jurisdiction of this court as a court of equity. These papers were filed in the early part of January; they had full notice of it; the answer sets up no such defense; there has been no motion addressed to the papers.

The Court: Does the answer—I have the answer here; does it, Mr. Hamill?

Mr. Hamill: The question of jurisdiction of subject matter can be raised at any time, can be raised after the close of

the plaintiff's case, your honor please. "There is a further [fol. 99] separate and distinct defense in point of law arising upon the face of the bill of complaint herein: defendants say that the only question of law involved was the alleged unconstitutionality of the several ordinances and statutes referred to in the bill of complaint and relied upon by plaintiffs in support of their alleged constitutional rights, which this court will not assume jurisdiction to determine."

Mr. Frazer: As your honor says, in any event, there is a mixed case of fact and law. I think that is the key——

The Court: Well, the facts on the disputed point or what I call the "disputed point" are in dispute so I will, of course, hear testimony. I don't know enough about it to know if they are in dispute or not.

Mr. Frazer: On the disputed point?

The Court: Yes.

Mr. Frazer: Of course if Mr. Hamill says that there is no dispute on the facts, and that this is a mere question of law, then it seems to me there was no reason for him to wait until this moment, after the case has been prepared, to raise such a question. But be that as it may, I insist that there are so many factors entering this case which involve not only law, but facts which would affect the jurisdiction of this court, that the only way this court could determine such a motion, if there be any merit in it on any ground, is by hearing the facts and considering the facts in conjunction with the law. Mr. Hamill has pointed out the fact that the ordinance to which he refers has been judicially sustained——

The Court: Which ordinance do you mean, Dean Frazer?

Mr. Frazer: The one in relation to the public meetings.

Mr. Hamill: The one I referred to was in relation to circulars, Mr. Frazer.

Mr. Frazer: Also I understood you to say the one in relation to public meetings.

[fol. 100] The Court: No, that has never been litigated, Dean Frazer, I don't think.

Mr. Hamill: It is the circular ordinance Mr. Frazer.

The Court: We are going to litigate it now and settle it.

Mr. Hamill: While you are looking there, here is an other paragraph of the answer: "For the first, further separate and distinct defense defendants allege that the plaintiffs have an adequate, complete and speedy remedy at law for viloation of their rights as alleged in the bill of complaint."

Mr. Frazer: I see that I am in error.

The Court: We don't wish to be technical, Dean Frazier; if there is any disputed question of fact on the public meetings, I think we should have those questions of fact shown.

Mr. Frazer: Well, now, of course, there are matters of this kind: assuming Mr. Hamill's argument, for a moment, if the situation be one which indicates discrimination, as for instance in the well-known California Laundry case, where there is a direct appeal to the Federal authorities to prevent the discriminatory enforcement of ordinances, there is a mixed question of fact and law, an ordinance good enough in itself, an ordinance unconstitutional and improper in the method of enforcement. That is a question which your Honor cannot possibly determine until the facts have been brought out, if that becomes the legal issue in the case.

The Court: Well, the leading book on Municipal Corporations seems to indicate in this language: "The use of city streets for conducting parades"—and I suppose that would apply to public meetings—"thereon, is a legitimate subject of municipal regulation, although ordinances for that purpose must be in general terms and apply to all alike." That seems to be the more specific question.

[fol. 101] Mr. Frazer: Yes, the permits may be discriminatorily refused, even though there may be a right to regulate for public safety, for traffic regulation and things of that kind. We don't dispute that fact, but we do dispute the fact that they have a right arbitrarily to refuse all meetings in public to us when they are allowing meetings of even greater number to be held at the same place for political purposes, and for socalled veteran organizations. We refuse to concede that they have a right to deny us a permit to speak in public on account of the fear of riot and bloodshed, when, as part of their organization they are staging meetings of socalled veterans to bring about bloodshed if we do meet. Those are all matters which are matters of proof and which I expect to prove here. And there is even a strike against this court; there is another mass meeting the public press says, in the Armory to-night, to protest——

The Court: Well, I would hardly think it was directed at this court.

Mr. Frazer: Well, I don't know, sir, but it is remarkable that it is coincidental with this case that the veterans are again being summoned, and I insist that we have a right to go on with our proofs.

The Court: Well, I said, Dean Frazer, if I can settle first the injunction with respect to the other points, that if you then wish to go on with your proof, I will be glad to hear it, not "glad"—that is a bad word,—it would be my duty to hear it.

Mr. Frazer: May I say to your honor that we are here prepared to go on; we have nothing in the form of a definite order of injunction; we have nothing except statements of general principles; when we get through with the general principles, it may be that we are unable to agree in terms; it may be——

[fol. 102] The Court: That may be so. Wouldn't it then be wise to take up the question of agreeing in terms at once?

Mr. Frazer: I think not, sir. I think the thing to do, and I believe that I have a right to insist on it, is to go on with the trial of my case. He comes in here with no particular offer; he comes in with a general statement, "we have never done things" which we insist they have always done. He makes his concessions upon what we insist is a false assumption.

The Court: Let's assume that they have always been done; the question is the terms of the order, isn't it?

Mr. Frazer: The terms of the order in part, but may I call your honor's attention to this, that the breadth of our proof may be very much limited by removing from the bill of complaint certain lines of allegation, which in themselves form a part of the general picture——

The Court: Well, after all——

Mr. Frazer: —going to the other issues in the cause that are all interrelated, sir.

The Court: Dean Frazer, this is a court, and the court has to deal with legal propositions. Now, if the injunction is satisfactory to both sides, I don't see what the court's concern is with what happened leading up to it in any case, this or any other case.

Mr. Frazer: Your honor is assuming a satisfactory injunction to both sides.

The Court: I am not assuming it at all; I am only suggesting that we might make an effort now to arrive at a satisfactory injunction on the undisputed points. It wouldn't take long, I shouldn't think.

Mr. Frazer: And forego the proof which we have prepared?

The Court: Not on the disputed points.

Mr. Frazer: I would make the suggestion sir, there is a competent group of counsel at the counsel table; there is a competent group here at my counsel table, that those [fol. 103] who are going to be actively engaged in the trial proceed with the trial and let the others go out, get together and draw something, and while we are going on with the trial, these matters may be made a matter of treaty, and if, by the conclusion of the case, everything is settled nicely between them in the form of a consent decree, very well. That is another picture. But to refuse——

The Court: Would it take more than an hour to draw an injunction? I will draw one in an hour for you.

Mr. Frazer: I think so, when you come to the nice terms of the injunction, I have very little confidence that the language will be as broad as we shall insist we are entitled to, and if it be not as broad as we are entitled to, we have a right to go on with our case, and your honor cannot compel us, without proof, to accept an injunction which we do not consent to.

The Court: No, that is perfectly true, and I have no such desire.

Mr. Frazer: I would therefore respectfully ask that we may go on with our case, and if the injunction proposition is to be made, that counsel start their parleys and see what they can do about it while the case goes on.

Mr. Hamill: No, if your honor please, so far as the facts in this case are concerned, I do not anticipate there will be the slightest difficulty in agreeing on all of the facts necessary to sustain a proper injunction, and let me say now what I didn't intend to say: Mr. Frazer has reproached me in a kindly way, of course, he couldn't do it any other wise, knowing him as I do,—and let me say in an equally kindly way that this bill of complaint, well, I was going to say is an old rag bag, filled with every kind of a fact near and far, relevant or irrelevant, intimate and remote, bearing on the issues of this case; and probably one-half of the allegations contained in this bill would be stricken out as irrelevant and the proof offered on them would be stricken out as irrelevant. So therefore I say that there will be no difficulty whatsoever in arriving at an [fol. 104] agreement upon the facts, sufficient to sustain and justify a proper injunction in this case. Now, Mr. Frazer said that it was a proposition of peace. Well, now,

it is a proposition of peace, but it is not a proposition of surrender. It is a suggestion made which will appeal to the convenience of all of us, and which would also save the time of the court and the time of counsel is dealing with this case, because this case will go on for a long time; and if I was guilty of withholding my motion or rather my suggestion to the court until this morning, it was simply because I had not decided until yesterday afternoon to present it, and then not with the fullest confidence. That is my reason for offering it at this time; and I believe it is a motion, the granting of which by the court will inure to the benefit not only of the defendants, but equally to the benefit of the complainants.

The Court: Can you submit the injunction in as broad terms as you feel will adequately protect you in an hour on the undisputed points?

Mr. Frazer: I can submit an injunction which on those points I think would be satisfactory, and which would be all I would expect from the court unproved. I would, however, rather hesitate to consent to an injunction of that character if it means I am to be limited in my proof.

The Court: You are the person who is asking for the injunction, Dean Frazer.

Mr. Frazer: Yes, sir, but I am asking for further injunction, and this whole thing, our picture of it is that it is conspiratorial and that every function here complained of is allied to another function, so that if we agree on the six points, whatever they are, that Mr. Hamill so generously suggests, we would have to have some concession on the other and get to a complete adjustment.

Mr. Hamill: All right.

Mr. Frazer: That is one thing, but I will not consent to an injunction without offering evidence, unless it be in [fol. 105] accordance with my terms, and also unless such portions of the evidence relating to those matters as I deem essential to prove the rest as being relevant, and as tending to show the conspiracy which we allege, may be admitted, notwithstanding any injunction which may be drawn.

The Court: Suppose you take an hour and present the injunction.

Mr. Frazer: We rise to what time?

The Court: 12:30. I will be here all day, Dean Frazer.

Mr. Hamill: I was going to make this suggestion if it

meets with the approval of counsel that we draw such injunction as we think should be made, Mr. Frazer draws such injunction as he thinks should be made, and then if we cannot agree on the injunction from a consideration of the copies made by each that we submit both copies to the court, and then the court either accept both of them and take something from each or else reject both of them and draw its own injunction.

Mr. Frazer: I don't understand that the court is here settling the final decree; I understand that I have a right to present my case and if the injunction which I wish is denied by the court, I shall insist on going on with my case. This is not a final decree being settled; I am perfectly willing to draw an injunction and submit it to Mr. Hamill and he may take it or leave it. That is my view of it and I think I have that right.

The Court: All right, we will adjourn until 12:30.

Recess.

Proceedings Resumed at 2 P. M.

The Clerk: All right, counsel.

Mr. Hamill: Your honor please, your honor about two hours ago sent counsel out to draft an injunctive order on [fol. 106] which both sides could agree; and so we agreed that counsel for the plaintiffs should prepare an injunctive order and then give it to us for our consideration and for such amendment or corrections or variations of its terms as we should think proper. About ten minutes after one, between five and ten minutes after one they handed us this injunctive order.

The Court: May I see the copy? I haven't got one. Now, could you give me just a chance to read it, Mr. Hamill? Don't remain standing. Now, I have read it; would it be agreeable to counsel if I discussed it with them privately?

Mr. Hamill: Your honor, we submit ourselves to your honor wholly; I merely want to make this observation, that this injunctive order,—and I shall close in a sentence,—I think this is important——

The Court: That's all right. It is not a question of time.

Mr. Hamill: It asks for more than they would get if every allegation of their bill were sustained or if the bill were

taken as confessed. I want to call attention to just one feature——

The Court: Just a minute, Mr. Hamill; is it the part of wisdom to discuss something that is not in final form?

Mr. Hamill: Whatever your honor thinks.

Mr. Frazer: I would like to say, I think Mr. Hamill is under a misapprehension as to what this paper is. He says a consent decree; I was to draw it, and he was to make such modifications as he wished; I don't understand that is the position at all. This is what I am offering, what I am capable, I believe, of proving by my evidence and if I don't get what I think I am capable of proving, I shall not offer the consent decree.

Mr. Hamill: May I ask you a question, Mr. Frazer: take for instance your paragraph where you claim the right—— [fol. 107] The Court: Now you are just going to do what I don't want you to do.

Mr. Hamill: Well, I don't want to do what the court doesn't want me to do, if the court please, but it was such a very palpable thing that I wanted to ask counsel to answer it.

The Court: Mr. Hamill, won't you and one of your associates and Mr. Frazer and Mr. Ernst come into my office. I only say one so that we don't get too many people talking.

(The Court and counsel repaired to the Judge's Chambers.)

Proceedings Resumed in Open Court

STATEMENT BY THE COURT

The Court: Counsel for the respective parties have drafted a tentative decree covering all points in dispute with the exception of the controversy arising out of the denial of permits to hold meetings. This tentative decree will be presented to both parties, and if agreed to will be signed by the court some time tomorrow. If it is not agreed to the whole case, and in any event the point reserved, will go to trial next Wednesday morning at ten thirty. All witnesses heretofore subpoenaed will return at that time without further subpoena.

[fol. 108] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1938

No. 6939

[Title omitted]

MINUTE ENTRY OF HEARING

And afterwards, to wit, the 23d day of December, 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable J. Warren Davis, Honorable John Biggs, Jr. and Honorable Albert B. Maris, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

[fol. 109] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1938

No. 6939

FRANK HAGUE, Individually and as Mayor of Jersey City; Daniel J. Casey, Individually and as Director of Public Safety of Jersey City; Harry Walsh, Individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City, Defendants-Appellants,

v.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union, Plaintiffs-Appellees

Appeal from the District Court of the United States for the District of New Jersey

OPINION—Filed January 26, 1939

Before Davis, Biggs and Maris, Circuit Judges

BIGGS, Circuit Judge:

The question presented by the appeal at bar is whether or not certain fundamental civil liberties safeguarded by

[fol. 110] the Constitution of the United States shall be observed and protected in Jersey City or shall there stand abridged.

The appellants, the defendants below, are the Mayor of Jersey City, the Director of Public Safety, the Chief of Police, and the Board of Commissioners of Jersey City. The appellees, the plaintiffs below, are the Committee for Industrial Organization, labor organizations affiliated with the CIO, individual representatives of such organizations, and the American Civil Liberties Union, a membership corporation.

The Nature of the Proceedings

The bill of complaint alleges that the appellants have denied the appellees the right to hold lawful meetings within the territorial limits of Jersey City allegedly upon the authority of an ordinance adopted April 15, 1930. It is further alleged that this denial was pursuant to a plan and conspiracy entered into by the appellants as public authorities of Jersey City to forbid all meetings organized by the appellees for the purposes of carrying on and discussing the work of the CIO and that to effect such ends the appellants exercised unlawful restraints upon the appellees and persons acting in sympathy with them. It is also alleged that the appellants denied the appellees and those acting in sympathy with them the right to disseminate information concerning the CIO by handbills or circulars and that this denial allegedly was pursuant to the authority of another ordinance of Jersey City passed upon January 22, 1924. It is also alleged that the appellants refused to permit picketing, excluded and deported agents of the appellees and persons acting in sympathy with them from the territorial limits of Jersey City, conducted searches and seizures without warrant or probable cause and generally harassed and molested the appellees and their agents in disregard of their constitutional rights. The bill of complaint prayed for injunctive relief. The appellants filed an answer in substance denying the charges made by the appellees, and [fol. 111] setting up as a defense that the appellees, their sympathizers and agents invaded Jersey City to cause and create confusion and riot and to intimidate the police. At the trial, which consumed many days, voluminous testimony was taken which we will briefly summarize.

The Evidence

It appears that in November, 1937, the appellee, William J. Carney, regional director of the CIO in New Jersey, prepared to inaugurate a drive for CIO membership in Jersey City. Learning of this fact, upon November 23, 1937, the Newark Evening News published an article headed, "CIO Prepared for Invasion—Mass Drive by 3,000 to be Launched Monday in Jersey City." The article went on to set forth certain statements alleged to have been made by Carney to the effect that there would now be a "show down" between the CIO and Mayor Hague. Carney was also reported to have said, "We will go to Jersey City to organize in a peaceful manner. Whether this will be possible in the face of denials of civil rights in that city I am unable to say at this time." Articles of similar tenor appeared about this time in other newspapers in and about Jersey City.

The record also shows that about six o'clock upon the morning of November 29, 1937, a number of persons, CIO members or sympathizers, gathered or attempted to gather at the CIO headquarters at No. 76 Montgomery Street, Jersey City. We use the phrase attempted to gather because the police were present about the headquarters in force, engaged in searching individuals and confiscating circulars and handbills relating to CIO union activities. A substantial number of these individuals were deported from Jersey City by the police by placing them upon ferry boats bound for New York City or by conducting them in motor vehicles beyond the territorial limits of Jersey City. A small number of individuals were arrested and a few were tried before a city magistrate who sentenced each defendant to five days imprisonment for the offense of [fol. 112] illegally distributing the circulars referred to. There is evidence that the police held CIO sympathizers for a time within the CIO headquarters, searching individuals as they went out through the door into the street, and thereafter entered the premises and made further searches and some seizures of the offending handbills.

The evidence is not entirely clear as to how many persons came to Jersey City or were in Jersey City attempting to take part in CIO activities upon the morning of November twenty-ninth, but an examination of it indicates that the

total number of these persons did not exceed a hundred, and their activities did not constitute an invasion within any accepted meaning of that word. What they had planned to accomplish presented no serious threat to the peace and good order of Jersey City. Upon the other hand the police of Jersey City sought to disorganize the forces of the CIO rather than to proceed in a manner calculated to preserve the civil rights of individuals. As we have stated, there were but few arrests and fewer trials. The conduct of the police upon this occasion was in gross violation of the civil rights of the persons concerned.

Within a comparatively short time thereafter the appellee, American Civil Liberties Union, attempted to secure a permit from the Director of Public Safety of Jersey City to hold an open air meeting in the City of Jersey City for the purpose of addressing the public upon the subject of civil liberties. The speakers were to be three members of Congress and a member of the bar of New York. At about this time also the CIO made an application for a permit for an outdoor meeting for the purpose of petitioning the Board of Commissioners of Jersey City to modify the ordinance prohibiting the distribution of circulars and to take action in respect to the alleged intimidation of owners of halls by certain officers of Jersey City. Certain persons were named as the speakers, including a member of Congress, CIO organizers, Roger N. Baldwin, and others. Permits to hold these meetings were refused by the Director [fol. 113] of Public Safety of Jersey City upon the ground that the meetings would lead to riots and disorder. A permit to speak was also refused to Norman Thomas, a former socialist candidate for President of the United States. A permit for a meeting was also refused to the American Whig Cliosophic Society of Princeton University, which desired to hold a public meeting in Jersey City at which Senator William E. Borah was to be the speaker. This permit was also denied upon the ground "that the said meeting would tend to create disturbance and disorderly assemblage." William M. Callahan, managing editor of "The Catholic Worker" was not granted a permit for a meeting though he stated that its purpose was to explain the Papal Encyclicals.

Protests in respect to the holding of CIO meetings were made to the Mayor and to the Department of Public Safety

by organizations in and about Jersey City. These included protests of the Jersey City Chamber of Commerce, the Association of the Sons of Poland, the Catholic War Veterans, the Jersey City Lions Club, the Jersey City Real Estate Board, the Ladies of the Grand Army of the Republic and the Italian War Veterans. There is evidence that Mayor Hague and his associates inspired at least some of these protests. The evidence is uncontrovertible that he was the spearhead of the movement to keep the appellee labor groups out of Jersey City. For example, a very large mass meeting of veterans' organizations was held at the Jersey City Armory and was addressed by Mayor Hague and other persons. The record indicates that the calling together of these organizations was done upon the instructions of Mayor Hague and that he himself actively collaborated in procuring the record attendance at the armory. At least one threat of violence was voiced against the CIO and its sympathizers. Mayor Hague, however, in testifying in the court below, made plain his belief that this threat was simply one by an overzealous individual and there was no real danger of physical violence from the veterans' organizations. This mass meeting voiced its approval of the [fol. 114] stand of the appellants in respect to the CIO and its sympathizers and protested against CIO speakers being allowed to address meetings in Jersey City.

The protests are important in that they serve as the basis expressed by the appellants for their refusal to grant permits for public meetings to the CIO and its sympathizers. While permits were refused to these persons by the Director of Public Safety, other groups whose views were not at variance with the opinions of the majority of the inhabitants of Jersey City received permits freely or the requirement of a permit was waived. It should be noted also that throughout this period of protesting mass meetings, the conduct of the police in respect to the appellees was similar to their conduct upon November 29, 1937. CIO members and sympathizers were deported from Jersey City and searches of individuals continued to be made without warrant or probable cause.

The reason given by Mayor Hague and certain of the other appellants in their testimony for such acts upon the part of the police was the necessity of preserving peace and good order in Jersey City and obviating the possibility of riot, strife and injury to the speakers and the citizens of

Jersey City. It in no wise appears, however, from the record before us that the police of Jersey City would have been powerless to maintain order at any meeting proposed by the appellees.

Findings of Fact and Conclusions of the Trial Court

After the trial of the cause the learned trial judge filed an exhaustive and able opinion and made exact and clear findings of fact and conclusions of law. He thereupon entered a decree granting the appellees substantially the relief they sought.

Among the findings of fact so made by the trial court are findings to the effect that the CIO, Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America and United Rubber Workers of America were established and are maintained for the purpose [fol. 115] of organizing into labor unions unorganized workers and to cause such labor unions to function as collective bargaining agencies for the betterment of terms and conditions of employment; that the American Civil Liberties Union was established and is maintained for the purpose of taking measures deemed by it to be essential for the enforcement of the rights secured by the First and Fourteenth Amendments to the Constitution of the United States. The court also found that the purposes of these appellees "are in the letter and spirit of our Constitution and laws and of the theory of our democratic institutions." The trial court also found that there was no competent proof that these appellees entertained other purposes or that the appellees or any of them "incited or advocated the overthrow of the government of the United States or the State of New Jersey by force or violence or incited or advocated the commission of any other acts in violation of the laws of the United States or the State of New Jersey."

Specifically in relation to the acts alleged by the appellees to have been committed by the appellants, the learned trial judge found that the appellants acting in their official capacities had adopted and enforced a deliberate policy of excluding and removing from the territorial limits of Jersey City the agents of the CIO and of the American Civil Liberties Union and persons acting in sympathy with them, had exercised unlawful personal restraints over these individuals and had interfered with their right of free locomotion on and free access to the public streets and parks

of Jersey City. The trial court also found that such exclusions and removals, personal restraints and interferences were frequently carried out by members of the police force of Jersey City upon their own fiat and without authority of law and without bringing the persons excluded, removed or restrained before any judicial officers in order to afford such individuals the benefits of judicial hearings.

Further findings of fact state that the appellants prevented the appellees or their agents from distributing cir- [fol. 116] culars and leaflets, from carrying placards or signs or otherwise publicizing the work of the CIO.

Particularly in respect to public meetings, the trial court found that the appellants officially adopted and enforced the deliberate policy of forbidding the appellees from communicating their views to the citizens of Jersey City by public gatherings or assemblies though there was competent proof that the appellants had granted permits to various persons, not associated with the appellees, to speak at meetings in the public streets of that city. The trial judge also found that there was no competent proof that the parks of Jersey City had been dedicated to any other purpose than the general recreation of the public. The trial court also found that there was no competent proof that the persons who were to speak at the meetings proposed by the appellees were such that any of them "either in their choice of words or in the manner of uttering the words chosen" would violate canons of decent discussion or speak such words that breaches of the peace would ensue. The trial judge found also that the appellants had caused permits to be refused for the holding of outdoor meetings of citizens to be addressed by the divers persons, sympathizers of the appellees, named in the findings of fact.

As a matter of law the trial court held that the appellants' deliberate official policy and acts were in violation of the rights of the appellees under the Fourteenth Amendment and the Commerce Clause of the Constitution of the United States.[1] These are the substantive questions of law presented by this appeal. A question of jurisdiction is also raised and will be considered later in this opinion.

---

[1] The findings of fact, conclusions of law and decree of the trial court are set out in haec verba in an appendix to this opinion along with the two ordinances of Jersey City referred to.

[fol. 117] The Questions of Law

As to Liberty of the Person

As to Exclusion and Removal of Individuals from Jersey City

Individuals coming into or going about a city upon their lawful concerns must be allowed free locomotion upon the streets and public places.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, inter alia, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * *." There is no doubt that the right of an individual to pass with freedom of movement and without molestation between the States of the Union is one of the privileges of federal citizens which is protected by this clause. As was stated in Williams v. Fears, 179 U. S. 270, 274, "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." See Crandall v. Nevada, 6 Wall. 36; Colgate v. Harvey, 296 U. S. 404; United States v. Miller, 17 F. Supp. 65, 67; Marcus Brown Holding Co. v. Pollak, 272 F. 137, 141; In re Ah Fong, 1 F. Cas. 213, 217; Twining v. New Jersey, 211 U. S. 78, 97.

The record before us shows numerous instances where CIO sympathizers were removed from Jersey City by police officers acting with the approval of the appellants. The findings of fact of the trial court in this regard are fully supported by the evidence and injunctive relief was properly granted.

As to Unlawful Searches and Seizures

The Fourth Amendment to the Constitution of the United States provides, "The right of the people to be secure in [fol. 118] their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, * * *". The right so protected is a fundamental civil right and in our opinion is a privilege of Federal citizen-

ship. As such it is secured against abridgment by the states by the privileges or immunities clause of the Fourteenth Amendment as well as by the due process clause of that Amendment. We shall consider this question further when dealing with the jurisdiction of the court below.

Constitutional provisions granting freedom from unlawful searches and seizures are "of the very essence of constitutional liberty." Gouled v. United States, 255 U. S. 298, 304; Go-Bart Importing Co. v. United States, 282 U. S. 344, 357. Searches and seizures are unreasonable if they are carried out without probable cause. Carroll v. United States, 267 U. S. 132; United States v. O'Connell, 43 F. (2d) 1005. As was so succinctly stated by Judge Woods of the Circuit Court of Appeals for the Fourth Circuit in Elrod v. Moss, 278 F. 123, 130, "* * * to justify search and seizure * * * without warrant, the officer must have direct personal knowledge, through his hearing, sight, or other sense, of the commission of the crime by the accused."

In the case at bar the searches and seizures were made without probable cause, without personal knowledge upon the part of the searching officer and in fact without any crime or crimes having been committed.

It is apparent therefore that the injunctive relief from unreasonable searches and seizures given to the appellees by the court below was granted providently.

As to Interferences in General

An examination of the record leads us to the conclusion that the police of Jersey City pursued a course of conduct towards the appellees which possessed no sanction whatsoever in statute or ordinance. The appellees contend that, "If the police policy were in terms embodied in a criminal [fol. 119] statute * * *" such a statute would be unconstitutional. They cite the language of Mr. Justice Brandeis in Senn v. Tile Layers Protective Union, 301 U. S. 468, 478, stating, "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." It is demonstrated by the record in the case at bar that though there is no ordinance of Jersey City which deals specifically with the right of picketing in labor disputes, none the less the practical effect

of the actions of the police in the case at bar was to prohibit picketing except upon terms and conditions imposed by the individual members of the police force.

It follows that when members of a police force remove individuals from a picket line, deport them from the territorial limits of a city or detain them in police custody under guise of arrest and release them without charges and without trial, the police are acting in defiance of due process of law as guaranteed by the Fourteenth Amendment. When, as in the case at bar, such conduct receives the consent and approbation of those charged with the conduct of city government, justice is destroyed. Such a condition is abhorrent in a democratic community.

An individual has a right to trial by properly constituted judicial authority upon a defined standard of criminal responsibility set forth by statute or ordinance. He must have the opportunity to be heard and to call witnesses in his own defense. This is the very essence of due process of law as prescribed by the Fourteenth Amendment. Powell v. Alabama, 287 U. S. 45, 68; Snyder v. Massachusetts, 291 U. S. 97, 122; United States v. Ballard, 12 F. Supp. 321, 325.

The findings of the trial court in respect to the issues under this heading are fully supported by the evidence and injunctive relief was properly granted.

[fol. 120] As to Liberty of the Mind

Interference with the Distribution of Handbills and the Carrying of Signs

An ordinance of Jersey City passed by its Board of Commissioners upon January 22, 1924, provides in part that "No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet," and prescribes severe penalties for its breach. There are no licensing provisions in the ordinance and the prohibition it contains is absolute.

Such an ordinance is invalid upon its face in that it violates freedom of speech and of the press, fundamental civil rights protected by the Fourteenth Amendment from any abridgment by State action. It is squarely within the decision of the Supreme Court of the United States in Lovell v. City of Griffin, 303 U. S. 444.

Indeed, we do not understand that the appellants themselves today contend to the contrary. As we apprehend their position, it is to the effect that there was no need to lay the burden of an injunction upon them since they themselves are prepared to respect and honor the ruling of the Supreme Court. The record shows clearly, however, that for some time after the handing down of the decision in Lovell v. City of Griffin, the police of Jersey City continued their practice of refusing to permit the distribution of handbills by the sympathizers of the appellees upon the streets and in the public places of Jersey City.

The posting of placards and signs in public places is part of the freedom of the press. In our opinion such is clearly within the principle of Lovell v. City of Griffin.

The findings of the trial court as to the violation of these fundamental civil rights by the appellants are fully supported by the evidence and the injunctive relief granted is affirmed.

[fol. 121] As to the Right of Free Assembly, the Holding of Meetings upon the Streets or in the Public Parks of Jersey City

An ordinance of Jersey City adopted April 15, 1930 by the Board of Commissioners provides that "* * * no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety." The ordinance also states that the Director of Public Safety is authorized to grant permits for parades and public assembly "* * * upon application made to him at least three days prior to the proposed parade or public assembly." The ordinance provides further that the Director of Public Safety is authorized to refuse a permit "* * * when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage." Substantial penalties are provided for the violation of the ordinance.

It is the contention of the appellants that permits for the holding of public meetings in Jersey City were properly refused to the appellees because such meetings would have resulted in riots and disorderly assembly.

We are of the opinion that the ordinance is unconstitutional in view of the fact that it permits the imposition of previous restraint upon the right of the individual to speak before an assembly of his fellows in a public place. The ordinance therefore prohibits peaceable assembly except upon terms repugnant to free speech. Freedom of speech and of the press are fundamental civil rights which are safeguarded to the individual by the due process clause of the Fourteenth Amendment.

As was stated by Mr. Chief Justice Hughes, delivering the opinion of the Supreme Court in De Jonge v. Oregon, 299 U. S. 353, "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. [fol. 122] The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

The refusal of the courts to allow previous restraint to be imposed upon the freedom of the press is well exemplified by the decision of the Supreme Court of the United States in Near v. Minnesota, 283 U. S. 697. In the cited case a statute of Minnesota (Chapter 285 of the Session Laws of Minnesota for the year 1925. See Mason's Minnesota Statutes, 1927, 10123-1 to 10123-3) provided for the abatement, as a public nuisance, of "* * * a malicious, scandalous and defamatory newspaper" and authorized suits in the name of the State to abate such periodicals and to enjoin publishers from further violations. Such a suit was brought against "The Saturday Press" published in Minneapolis. From the opinion of the Supreme Court it appears that the articles contained in The Saturday Press were inflammatory and had led to actual violence. By its decision the Supreme Court of the United States reversed a decree of the Supreme Court of Minnesota sustaining an injunction abating the publication of the periodical. Mr. Chief Justice Hughes, delivering the opinion of the Court, stated: "It is no longer open to doubt that the liberty of the press, and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property."

The Chief Justice went on to state, "If we cut through mere details of procedure, the operation and effect of the (Minnesota) statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter. * * * This is of the essence of censorship.

[fol. 123] "The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically conceived and guaranteed. In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication * * *".

The Chief Justice also stated, "Equally unavailing is the insistence that the statute is designed to prevent the circulation of scandal which tends to disturb the public peace and to provoke assaults and the commission of crime. Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably create a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication. 'To prohibit the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct.' There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship and restraint upon publication. As was said in New Yorker Staats-Zeitung v. Nolan, 89 N. J. Eq. 387, 388; 105 Atl. 72: 'If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.' The danger of violent reactions becomes greater with effec-

tive organization of defiant groups resenting exposure, and if this consideration warranted legislative interference with [fol. 124] the initial freedom of publication, the constitutional protection would be reduced to a mere form of words."

In Grosjean v. American Press Co., 297 U. S. 233, the Supreme Court held that the predominant purpose of the grant of immunity there invoked by the appellees, viz., the immunity granted by the Fourteenth Amendment, was "* * * to preserve an untrammeled press as a vital source of public information." The Supreme Court thereupon proceeded to affirm the decree of the court below declaring unconstitutional a so-called licensing tax sought to be imposed upon the appellees by the State of Louisiana (La. Act No. 23, July 12, 1934). See also Dearborn Publishing Co. v. Fitzgerald, 271 F. 479.

There is strong analogy between the right freely to publish the written or printed word and the right here in issue freely to speak in a public assembly. It may be argued that inflammatory words spoken before an audience may lead more quickly to violence than the printed word dispersed throughout a city. The question, however, is one of degree. Free speech and free assembly are commonplaces of democratic governments. They are unheard of under totalitarian regimes. In New York and in London, cities possessing populations as diverse as Jersey City, free speech and free assembly are allowed as a matter of course and speakers may there call even for the destruction of existing laws and governments and be received with tolerance or amusement.

The rights of free speech and free assembly are essential parts of our American heritage. If the words used by a speaker are slanderous, the injured person may sue for damages in a court at law. If the speaker incites to riot or crime, the police may arrest him forthwith and the criminal processes of a democracy are available to punish him. In his concurring opinion in Whitney v. California, 274 U. S. 357, in which the question before the court was one of punishment of the defendant, she having spoken in defiance of [fol. 125] the Criminal Syndicalism Act of California (Statute 1919, c. 188, p. 281) Mr. Justice Brandeis stated at page 378, "The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious in-

jury to the state. Among free men the deterrents ordinarily to be applied to prevent crime are education and punishment for violence of the law, not abridgment of the right of free speech and assembly." We can perceive no valid reason why the situation should be otherwise in Jersey City. Speakers may not be prohibited from speaking because they may say something which will lead to disorder. The function of the police at public meetings is not to prevent speakers from presenting their views but to preserve order while they speak. Otherwise, freedom of speech and assembly is destroyed.

The interpretation of the rights of free speech and free assembly contended for by the appellants is shocking and places these rights in the hands of those who would destroy them. If the ill-intentioned threaten riot, speech may not be had. Under what conditions then would not the cry of riot be raised? Applying the appellants' doctrine literally, political speakers might not stump a city in an election if their opponents objected to what they had to say and threatened disorder. The strict application of such a rule would result eventually in the existence of but one political party as is now the case under totalitarian governments.

The rule contended for by the appellants is scarcely one which commends itself to practical democratic government. Nor do we think that the appellants have followed such a rule. The record shows that the appellees and their sympathizers were not permitted to speak because they were deemed to be undesirables by the city authorities. The cries of impending riot raised by the appellants are not candid. In other words, Mayor Hague and his associates, reversing the usual procedure, troubled the waters in order to fish in them.

[fol. 126] There are of course both proper and improper times and places for holding public meetings. It is difficult to conceive a time when a public meeting might properly be held at Broad and Chestnut Streets in Philadelphia or at Broadway and Forty-Second Street in New York City. If public meetings are to be held upon the streets of a city, they must be held at such places or such times as will permit them not to interfere unreasonably with the traffic and all that it implies. Such a rule, however, should not be too narrow a one, for if a public meeting is held, it is to be assumed that volume of traffic will be increased. If mass

meetings are to be held in public parks, they must be held at such times and in such localities that they will not unduly interfere with the public recreation to which parks are dedicated. A statute or ordinance embodying these principles of regulation would in our opinion be constitutional.

Much emphasis is placed by the appellants upon the decision of the Supreme Court in Davis v. Massachusetts, 167 U. S. 43, upon appeal from a decision of the Supreme Judicial Court of Massachusetts, reported in 162 Mass. 510, 39 N. E. 113. In the cited case an ordinance of Boston forbade speaking on the Common without a permit from the city authorities. Davis desired to use the Common for religious services. He proceeded to speak without asking for a permit and was arrested and convicted. Upon the appeals that conviction was sustained.

The Davis case, however, may be distinguished upon its circumstances from that at bar. As we have stated, Davis never applied for a permit to the city authorities. In the case at bar, the appellees sought permits in accordance with the terms of the Jersey City ordinance and permits were denied to them. Upon the question of the constitutionality of the ordinance now under discussion, however, it is in point and we cannot state otherwise. In our opinion, however, the rule laid down in the Davis case has been modified by the later decisions of the Supreme Court in Gitlow v. New [fol. 127] York, 268 U. S. 652; Fiske v. Kansas, 274 U. S. 380; De Jonge v. Oregon, supra; Near v. Minnesota, supra, and Lovell v. City of Griffin, supra. In these later cases the Supreme Court declared the modern doctrine of protection of liberty of speech and assembly against state and municipal restrictions and made plain by judicial interpretation that the freedom of press and speech expressly protected by the First Amendment of the Constitution against Federal interference was also protected by the Fourteenth Amendment against interference by the States. Moreover, in the Davis case there is but small discussion of civil liberties. The Supreme Court took the position that "* * * for the legislature * * * to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house." This view of the powers of city authorities in respect to a public park, viz., likening them to the powers of an individual over his own dwelling, does not seem consonant with the expressions of

the Supreme Court upon germane subjects in a later period. On the contrary we think it cannot now be doubted that a city owns and its officials administer its streets and parks, not as private proprietors, but as trustees for the people. While streets and parks are to be administered primarily for the use of the people for travel and recreation it is equally certain that, consistent with such uses, the public places of a city must be open for the use of the people, in order that they may exercise their rights of free speech and assembly. If this were not so it is obvious that these rights would be but empty forms for those unable to obtain suitable private places in which to exercise them.

The Ordinance Has Been Administered in an Unconstitutional Manner

But even if we were to assume that the ordinance of Jersey City under consideration is valid and constitutional, none the less we find that it has been administered in a discriminatory and therefore unconstitutional manner. [fol. 128] The learned trial judge in three of his findings of fact treats the past performances of the speakers designated by the appellees, whether they have spoken with decency and without causing disorder, as constituting the test, or at least the most important single factor of the test, as to whether they will cause disorder if permitted to speak. He then found as a fact that none of the speakers designated by the appellees had ever spoken at any public meetings in the open air at the places designated in the applications for permits and that none of the designated speakers in past performances had ever given reasonable grounds for belief that breaches of the peace would result from their utterances. The test so applied by the trial judge seems to us to be a proper one if it be conceded that previous restraint may be imposed. We can conceive of no other unless the speeches sought to be given are subjected to prior censorship by the authorities, a course completely incompatible with the right of free speech and assembly. The findings of fact referred to are fully supported by the evidence.

We can find no competent evidence from the record before us that violence or disorder would have resulted either from the meetings which the appellees desired to hold or from the words which the speakers were likely to deliver at such meetings. Nor was there any reasonable apprehension that the public in Jersey City would have rioted. The record,

however, presents an extraordinary fact. The Mayor of Jersey City and the other appellants endeavored to build up a dangerous situation, one in which sympathizers of the appellees could not safely speak. That such efforts did not result in actual danger seems to us to have resulted rather from the good sense of the citizens than from the good will of Mayor Hague and his associates. As we have stated, while denying permits to the appellees and their sympathizers, the appellants granted permits for meetings to other groups. Discrimination is therefore plainly shown.

Such conduct upon the part of the appellants is in violation of the due process and equal protection clauses of the [fol. 129] Fourteenth Amendment. The criterion imposed by the authorities of Jersey City upon the right to speak therein is simply whether or not the individual who is to speak is a right thinking person in the view of those who constitute the city authorities. No other test is applied. The authorities upon this subject are very clear. In Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350, 352, Mr. Justice McReynolds, delivering the opinion of the Supreme Court stated, "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

In Concordia Fire Insurance Co. v. Illinois, 292 U. S. 535, 545, Mr. Justice Van Devanter stated, "Whether a state statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application, and invalid when given another." See also Yick Wo v. Hopkins, 118 U. S. 356, and People ex rel. Doyle v. Atwell, 232 N. Y. 96, 102, 103, 133 N. E. 364, wherein Cardozo, J., stated, "The Mayor refused a permit, it is said, because the applicants were Socialists. If that is so, he was guilty of a grave abuse of power."

The appellants contend that the ordinance does not concern itself with speech at all and does not attempt to regulate what may or may not be said at public meetings; that it was designed merely to regulate the manner in which the streets and public places of the city might be used. The appellants argue this is a valid exercise of the police power

and does not infringe or abridge any of the constitutional rights of the appellees. This is really the contention that the ordinance is valid and constitutional upon its face, a contention which we have dealt with in an earlier part of this opinion. It is obvious that whether the ordinance be valid upon its face or otherwise, none the less it has been [fol. 130] used by the authorities of Jersey City for abridging the rights of free speech and free assembly.

The findings of fact made by the trial judge upon this phase of the case are supported fully by the evidence and the injunctive relief sought by the appellees was properly granted to them.

As to the Defense of Unclean Hands Advanced by the Appellants

The appellants urge that the appellees are not entitled to the injunctive relief granted them because they come into court with unclean hands. This contention is controverted by the express finding of the trial court that there was no competent proof that the appellees had so conducted themselves as to forfeit the protection of a court of equity. Our conclusions are substantially similar to those of the trial judge. We think that an American community, devoted to American principles, cannot exist upon the terms offered by the appellants. Minorities, however unpopular, must be allowed to make their voices heard and the whipping up of public indignation and public clamor to the end that free expression of opinion and free assembly may not be had sits with little grace upon the officials of an American city. Fundamental civil liberties must not be tampered with if our system of democratic government is to survive.

We do not find the appellees guilty of having unclean hands.

As to the Enforcement of the Decree

The appellants contend that it is not feasible for the court below to enforce the provisions of the decree entered by it and that therefore it should not have been made. Giles v. Harris, 189 U. S. 475. More specifically, the appellants' contention is that it would require the court below to exercise supervisory powers over the administration of government in Jersey City and to interfere with the orderly exercise of governmental duties. The appellants also contend

[fol. 131] that the court below has in effect constituted itself an ordinance making body and has involved itself directly in the administration of the public business of Jersey City.

We consider these objections to the decree to be without merit and consider it unnecessary to treat them in detail. We state that in our opinion the decree is enforcible and does not substitute the will of the court for that of the governing authority of Jersey City. Moreover, the decree is carefully worded. The police are left free to pursue the duties placed upon them by law, and in so far as they act within the scope of the law their activities are in no wise interfered with or hindered. The authorities of Jersey City, by the terms of the decree carefully drawn by the court below, are free to carry out their duties in respect to preserving the safety of the lives and property of the inhabitants of Jersey City within the structure of existing law.

In our opinion, however, paragraph 4.(d) of the decree requires modification in that it enjoins the appellants from enforcing their deliberate policy of forbidding the appellees or their sympathizers to hold meetings upon the public streets or places of Jersey City other than parks, "unless and until" the appellants, acting in their official capacities, adopt and enforce a deliberate policy of forbidding meetings of any kind upon the streets or public places of Jersey City, other than parks. For the reasons heretofore stated it is our opinion that the clause of paragraph (d) beginning with the word "and" in the seventh line thereof and ending with the word "City."[2] in the twelfth line thereof should be stricken from the injunction, enlarging it as will appear.

[fol. 132] As to the Questions of Jurisdiction

Much of the argument of counsel and of the briefs of the parties has been devoted to the question of whether there was jurisdiction of the cause in the court below. In our opinion the issue of jurisdiction must be resolved in favor of the appellees, not only under the provisions of Section

---

[2] The precise language is as follows:

"* * * and unless and until the defendants acting in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares or places of the City of Jersey City. * * *"

24(1) of the Judicial Code (28 U. S. C. A. 41(1)), but also under the provisions of subsection 14 of that section (28 U. S. C. A. 41(14)). We will deal first with the last mentioned but more vital section.

As to Jurisdiction Under Section 24(14) of the Judicial Code

The appellants contend that the fundamental civil rights here in issue were brought into the American Colonies from England and therefore antedated the adoption of the Federal Constitution. They also contend that these rights were not secured to citizens of the United States by the Constitution in the sense that they were created in the first instance by that instrument. It follows therefore, contend the appellants, that the court below did not have jurisdiction of the cause at bar under the provisions of Section 24(14) of the Judicial Code because that subsection relates only to rights "secured by the Constitution" in the sense the appellants have indicated, while the rights sub judice were not secured to the appellees by the Constitution in that sense.

The appellants refer to the right of freedom from unreasonable searches and seizures and state that it is elementary that this right granted by the Fourth Amendment is protected by that Amendment only against abridgment by the Federal government. The appellants point out that because the right to be free of unreasonable searches and seizures is set forth in the Bill of Rights, it is proven that this right existed in the states prior to the adoption of the Constitution.

[fol. 133] This is of course true and it is elementary that the Bill of Rights was designed as a curb upon the power of the Federal government which it was feared might encroach upon the rights of the states. We are unable to perceive any reason, however, why the right to be free from unreasonable searches and seizures set forth in the Fourth Amendment should not stand upon a parity today with freedom of religion, of speech, of the press and of assembly as guaranteed by the First Amendment. All of these rights are of equal importance to the individual and in our opinion they stand as pari materia.

Liberty of the person, including freedom of locomotion, is, as we have seen, one of " * * * the privileges or immunities of citizens of the United States * * *" pro-

tected by the Fourteenth Amendment against abridgment by the states. Among those rights and liberties of which the states may not deprive the individual under the due process clause of that Amendment are freedom of speech, Stromberg v. California, 283 U. S. 359, and freedom of the press, Gitlow v. New York, supra. In our opinion freedom from unreasonable searches and seizures is included as well.

These fundamental civil rights were secured to the individual against infringement by the Federal government by the First and Fourth Amendments. In a very real sense thus they became privileges of Federal citizenship. Consequently they are among the privileges of citizens of the United States as distinguished from those appertaining purely to state citizenship and are privileges which no state may abridge under the Fourteenth Amendment. Protected from abridgment by the Federal government by the First and Fourth Amendments, they are protected from abridgment by the states by the Fourteenth Amendment. See Colgate v. Harvey, supra, at page 428, wherein it was stated by Mr. Justice Sutherland, "* * * a State cannot under the Fourteenth Amendment, abridge the privileges of a citizen of the United States, albeit he is at the same time a resident of the State which undertakes to do so * * *". [fol. 134] See also the Slaughter House Cases, 16 Wall. 36, 79, in which Mr. Justice Miller described the right of peaceful assembly as a privilege of citizens of the United States. It follows therefore that the fundamental civil rights secured to citizens of the United States by the First and Fourth Amendments are secured in the sense of being protected or guaranteed against interference by State action by the Fourteenth Amendment.

To discuss now the specific statutes under which jurisdiction is invoked in the suit at bar, R. S. 1979 (8 U. S. C. A. 43) provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Section 24, subdivision fourteenth of the Judicial Code (28 U. S.

C. A. 41 (14)) gives the district courts of the United States original jurisdiction, without regard to the amount in controversy, "* * * of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage, of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." These provisions were brought forward from Section 1 of the Act of April 20, 1871, c. 22, 17 Stat. 13, entitled "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes." It is clear therefore that they refer to the civil rights secured by the Fourteenth Amendment, including those fundamental rights which are involved in this suit. See Holt v. Indiana Manufacturing Co., 176 U. S. 68.

[fol. 135] Since the statutory provisions set out above were enacted originally to enforce recognition by the states of the civil rights secured by the Fourteenth Amendment and in view of the fact that the civil rights to which the Fourteenth Amendment affords protection are secured by it only in the sense of being protected or guaranteed against invasion by the states, we think that it is entirely clear that Section 24(14) of the Judicial Code, uses the phrase "secured by the Constitution" in that sense which is its plain and ordinary meaning, viz., to put beyond hazard of losing.

In the case of Smith v. United States, 157 F. 721, decided in 1907, a contention similar to that of the appellants was made in respect to the interpretation of rights under the Thirteenth Amendment by the defendants with regard to the jurisdiction of a district court of the United States to try them upon an indictment which charged them with conspiracy to place negroes in a condition of involuntary servitude. Freedom from involuntary servitude is as important as, and bears a status precisely similar to, freedom of religion, of speech and of the press. The Circuit Court of Appeals for the Eighth Circuit demolished the argument. Judge Adams stated, pages 724, 725, "A complete answer to defendants' contention is afforded by the

fact that the statute[3] protects a right 'secured' by the Con-
[fol. 136] stitution and laws; not one originating in, created, or granted by them. * * *

"A right which has been conferred by law is manifestly secured by that law. Such concession, however, is no authority for the contention that a right secured by law must necessarily have been conferred by some law."

But if we were of the opinion that the words used in the statute "secured by the Constitution" mean created in the first instance by the Constitution we would still be compelled to hold that these rights were secured by the Constitution since, as we have seen, they were secured in that sense to the people of this country by the First and Fourth Amendments which conferred these rights upon citizens of the Federal government and protected them against infringement by that government.

Consequently it follows that upon either view, since the suit at bar was brought to secure the protection and enforcement of rights of which the appellees had been deprived by the appellants, it was authorized by R. S. 1979, quoted above, and the District Court had jurisdiction of the cause by virtue of the provisions of Section 24(14) of the Judicial Code.

As to Jurisdiction under Section 24(1) of the Judicial Code

We are of the opinion that the court below also had jurisdiction of the cause under the first subdivision of Section 24 of the Judicial Code (28 U. S. C. A. 41(1)) which provides that the District Courts of the United States shall

---

[3] R. S. 5508 (18 U. S. C. A. 51), which is as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

have original jurisdiction "* * * of all suits of a civil nature at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000, and (a) arises under the Constitution or laws of the United States * * *". It is obvious that the suit at bar arises under the Fourteenth Amendment and the only question which remains to be determined is the value of the matter in controversy.

[fol. 137] As we have seen, the suit involves the deprivation of civil rights. R. S. 1979 and 1980 give to the individuals thus deprived a right of action at law. Irrespective of these statutes, however, a right of action in the individual for damages for loss of political rights existed at common law. Nixon v. Herndon, 273 U. S. 536. Such an action sounds in tort and the jury may award exemplary or punitive damages. Barry v. Edmunds, 116 U. S. 550; Wiley v. Sinkler, 179 U. S. 58. In such an action the jurisdictional sum is to be determined by the amount claimed by the plaintiff in his complaint or declaration, Hulsecamp v. Teel, 2 Dallas 358, Wiley v. Sinkler, supra, including an amount claimed by way of punitive damages, Ragsdale v. Rudich, 233 F. 182, unless it appears from the complaint or declaration that it is not possible for the plaintiff to recover the amount claimed or that the amount is claimed fraudulently in order to create jurisdiction in the court. Smithers v. Smith, 204 U. S. 632. This rule applies as well to suits in equity. Maurel v. Smith, 220 F. 195.

In the suit at bar the amount in controversy is to be determined by the value of the civil rights of which the appellees were deprived in the past and which are threatened with loss in the future. The value is to be measured by the amount of damages which might be recovered by the appellees in an action at law. In the bill of complaint the appellees aver that the amount in controversy exceeds $3,000, exclusive of interest and costs. The court below found that the rights of the appellees and of each of them which had been abridged or destroyed by the appellants had a value to each appellee in excess of $3,000, exclusive of interest and costs. This was in effect a finding by the court that each of the appellees might have recovered such a sum in damages for each deprivation of a right. It was also the equivalent of a finding that the amount claimed by

the appellees to be in controversy was averred by them in good faith.

[fol. 138] In our opinion the court below would not have been justified in holding otherwise. Wiley v. Sinkler, supra. Its finding is precisely similar to that of a jury in an action for damages brought to redress the deprivation of civil rights and was not required to be based on specific evidence as to the value but rather upon the trial judge's own knowledge and opinion as to the value and as to the exemplary or punitive damages which might be reasonably awarded. Wayne v. Venable, 260 F. 64.

As to the Capacity of Certain of the Appellees to Maintain the Action at Bar

The appellants contend that because one of the appellees is a corporation and others are unincorporated associations they are not entitled to enjoy some of the civil rights which are the subject of the suit. All of the appellees referred to however are membership corporations or associations and it clearly appears that the suit was brought by them for the benefit of their members. In our opinion these appellees were proper parties and able to conduct the suit in representative capacities on behalf of the interests of their respective members. International News Service v. Associated Press, 248 U. S. 215.

As to the Contention That the Actions of the Appellants Did Not Constitute State Action

The appellants also contend that their actions complained of by the appellees did not constitute action by the State of New Jersey within the prohibition of the Fourteenth Amendment. The acts enjoined by the court below were of three types: (1) acts pursuant to the express mandate of city ordinances found to be void on their face; (2) acts carried on under color of city ordinances discriminatively and therefore unconstitutionally applied; and (3) acts not under the authority of any ordinance or statute but committed under color of municipal office and as part of a deliberate municipal policy.

[fol. 139] As to the first class, we entertain no doubt but that the appellants' acts constituted action by the state since an ordinance adopted by a city under authority of

state legislation[4] has been held to be an act of the state within the meaning of the Fourteenth Amendment. New Orleans Waterworks Co. v. Louisiana Sugar Refining Co., 125 U. S. 18. The actions of the appellants in the second category must be held likewise to be state actions. Fidelity and Deposit Co. v. Tafoya, 270 U. S. 426. Indeed, there is no doubt that the provisions of the Fourteenth Amendment guaranteeing equal protection of the law are violated if, as the court below found in the case at bar, municipal officers failed systematically to enforce an ordinance equally against all the members of the class affected by it. Cumberland Coal Co. v. Board of Revision, 284 U. S. 23. The third category of acts must also be held to be the acts of the State within the meaning of the Fourteenth Amendment. Ex parte Virginia, 100 U. S. 339; Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278. As Chief Justice White said of the Fourteenth Amendment in the case last cited, "It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amendment is that where an officer or other representative of a state, in the exercise of the authority with which he is clothed, misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the state has authorized the wrong is irrelevant, and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power."

[fol. 140] As to the Adequacy of the Appellees' Remedy at Law

The appellants contend that the appellees have a full and adequate remedy at law and that therefore the causes of action set up in the bill of complaint are not cognizable in equity. In our opinion this contention cannot be sus-

---

[4] See P. L. 1882 N. J., p. 47, as amended by P. L. 1901, N. J., p. 78.

tained. The record clearly shows a shocking constant disregard of the basic civil rights of the appellees by the appellants. These acts were torts and their threatened continuance is sufficient ground for the equitable relief sought and granted. Terrace v. Thompson, 263 U. S. 197, 214; Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 11, 12; Osborne & Co. v. Missouri Pacific R. Co., 147 U. S. 248, 258.

The decree of the court below is modified as heretofore indicated in this opinion by striking from paragraph 4.(d) of the injunction the words of limitation heretofore specified and is in all other respects affirmed.

A true Copy. Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 141] APPENDIX TO OPINION

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE TRIAL COURT

Findings of Fact

A. Parties

1. Plaintiff Committee for Industrial Organization is a voluntary unincorporated committee having its principal office in the District of Columbia. Plaintiffs Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America, and United Rubber Workers of America, are voluntary unincorporated labor organizations affiliated with plaintiff Committee for Industrial Organization. Plaintiff William J. Carney is director for the State of New Jersey of plaintiff Committee for Industrial Organization, and plaintiffs William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley are field representatives of the Committee for Industrial Organization under the supervision of plaintiff William J. Carney.

2. Plaintiff American Civil Liberties Union is a membership corporation having its principal office in the City of New York.

3. Defendant Frank Hague is Mayor of the City of Jersey City, defendant Daniel J. Casey is Director of Public Safety of Jersey City, defendant Harry Walsh is Chief of Police of Jersey City, and defendant The Board of Commissioners of Jersey City is the governing board of Jersey City. Defendant Frank Hague, as mayor, has general supervisory powers over all city departments and by his admission and in fact the policies of these departments, including the policies of the department of public safety, are his policies.

[fol. 142] B. The Purposes of the Parties

1. Plaintiffs, the Committee for Industrial Organization, Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America, and United Rubber Workers of America, were established and are maintained for the purpose of bringing about the organization as labor unions of unorganized workers in various industries and with the further purpose of causing said labor unions to exercise the normal and legal functions of labor organizations such as collective bargaining with respect to the betterment of wages, hours of work and other terms and conditions of employment.

2. Plaintiff, American Civil Liberties Union, was established and is maintained for the purpose of taking such measures as it deems lawful and essential for the enforcement of the rights secured by the First Amendment and the Fourteenth Amendment of the Constitution of the United States. The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. Defendants, Frank Hague, Daniel J. Casey and Harry Walsh, were elected or appointed and are in office for the purpose of taking part in the administration of the government of the City of Jersey City.

4. The purposes of the plaintiffs above set forth are in the letter and spirit of our Constitution and laws and of the theory of our democratic institutions.

5. There is no competent proof that the plaintiffs or any of them had any other purposes and more particularly there is no competent proof that the plaintiffs or any of them incited or advocated the overthrow of the government of the United States or the State of New Jersey by force of [fol. 143] violence or incited or advocated the commission of any other acts in violation of the laws of the United States or the State of New Jersey.

C. Liberty of the Person

1. The defendants acting in their official capacities have adopted and enforced the deliberate policy (a) of excluding and removing from the limits of Jersey City various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs, (b) of exercising personal restraint over various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs and (c) of interfering with the right of locomotion on and the free access to public streets, highways, thoroughfares, parks and places of the City of Jersey City of various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs.

8. This exclusion, removal, personal restraint and interference has been carried out by force and violence and without the consent of and contrary to the will of certain of the individual plaintiffs, various agents of the plaintiffs, Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with them, although all of those persons were at the time of such exclusion, removal, personal restraint and interference acting in an orderly and peaceable manner.

3. This exclusion, removal, personal restraint and interference of persons by force and violence is carried out by members of the police force of Jersey City on their own administrative fiat without authority of law and without bringing the persons, excluded, removed, personally restrained and interfered with as speedily as is reasonably [fol. 144] possible before any judicial officer in order that

such persons may be afforded a judicial hearing or day in court.

D. Liberty of the Mind

Circulars, Leaflets and Handbills

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert with them from distributing any circulars, leaflets or handbills and more particularly Plaintiffs' Exhibit No. 1 (handbill), No. 4 (leaflet), No. 7 (circular), and No. 32 (circular) in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City passed January 22, 1934.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The circular, leaflets and handbills whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the circulars, leaflets and handbills thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of circulars, leaflets and handbills by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

[fol. 145] Placards

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert

with them from distributing placards in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City adopted February 19, 1935.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The placards whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the placards thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of placards by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

E. Public Meetings

1. The defendants in their official capacities have adopted and enforced the deliberate policy of forbidding the plaintiffs and persons acting in sympathy or in concert with them, from communicating their views to the citizens of Jersey City through the holding of meetings or assemblies in the open air and at public places.

[fol. 146] 2. On or about December 17, 1937, plaintiff American Civil Liberties Union duly applied under and pursuant to the ordinance of the City of Jersey City adopted April 16, 1930, for a permit to hold an outdoor assembly in a public place in the City of Jersey City, to be addressed by Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst; and on or about December 23, 1937, plaintiff Committee for Industrial Organization similarly applied for a permit to hold an outdoor assembly to be addressed by Congressman O'Connell, Roger

N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler. Said applications were severally denied by defendant Daniel J. Casey upon consultation with and approval of the other defendants herein.

3. There is no competent proof that the parks of Jersey City or any of them are dedicated for purposes other than the general recreation of the public.

4. There is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications for the permits above referred to.

5. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications of the permits above referred to at which said public meetings or assemblies any breach of the peace whatsoever had occurred.

6. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the [fol. 147] open air and at public places previous to the applications for the permits above referred to at which said speakers or any of them had either in their choice of words or in their manner of uttering the words chosen violated the reasonable canons of decent discussion or given reasonable apprehension to believe that breaches of the peace would result from the utterance of the said words.

7. There is competent proof through Plaintiffs' Exhibits Nos. 10 and 11 that the City of Jersey City has granted permits — various persons other than the plaintiffs proposing to speak at meetings in the public streets of the said city.

F. Jurisdictional Allegations

1. The rights of the plaintiffs and each of them, interfered with and frustrated by the defendants, above set forth,

have a value as to each plaintiff in the excess of the sum of $3000, exclusive of interest and costs.

2. The enforcement of the defendants' policies above set forth, as against the plaintiffs, herein, results in irreparable damage to them and the threat of continued enforcement of said policies against them involves a threat of manifold and repeated prosecutions for alleged offenses and manifold and repeated invasions of their rights.

3. There is no competent proof that the plaintiffs Committee for Industrial Organization and American Civil Liberties Union are such organizations or that the individual plaintiffs have so conducted themselves as to forfeit the protection of a court of equity.

Conclusions of Law

1. The Court has jurisdiction over this suit under Section 24 (1) of the Judicial Code (28 U. S. C. A., Section 41 (1)), and under Section 24 (14) of the Judicial Code (28 U. S. C. A., Section 41 (14)), and under Section 24 (12) and [fol. 148] (14) of the Judicial Code (28 U. S. C. A., Section 41 (12) and (14)).

2. The defendants' official policy and acts respecting exclusion, removal and personal restraint are in violation of Section 1, and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the interstate commerce clause of Article 1, Section 8 of the Constitution of the United States.

3. The defendants' official policy and acts respecting interference, free access to, locomotion and communication of thoughts on the public streets, highways, thoroughfares, parks and places of the City of Jersey City are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The defendants' official policy and acts respecting distribution of literature on the public streets, highways, thoroughfares, park- and places are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City, passed January

22, 1924, under which the defendants have purported to act, is, with respect to such distribution of literature, held to be void, unconstitutional and of no force or effect.

5. The defendants' official policy and acts respecting placards are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City adopted February 19, 1935, under which the defendants have purported to act, is held to be void, unconstitutional and of no force or effect.

6. The defendants' official policy and acts respecting public assemblies are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City, adopted April 15, 1930, under [fol. 149] which the defendants have purported to act, is in its application void, unconstitutional and of no force or effect.

7. The plaintiffs herein have established and proved a cause of action under the Constitution of the United States, and under Section 43 of Title 8 of the United States Code, and under Section 47 (3) of Title 8 of the United States Code, reinforced by Section 51 of Title 18 of the United States Code.

8. The separate and distinct defense in point of law set forth in the defendants' answer herein, to the effect that certain of the defendants were improperly joined as individuals, is held to be insufficient in law upon the face thereof.

9. The allegations contained in the second paragraph added to the defendants' answer by their amendment to answer are held not to constitute a valid defense and to be insufficient in law as a defense upon the face thereof.

10. The plaintiffs have no adequate remedy at law, and have established a cause of action entitling them to relief in this court of equity, and are not debarred from such relief by any acts heretofore performed by them, and do not come into this court of equity with unclean hands.

11. The plaintiffs are entitled to a permanent injunction against defendants in terms and form as in the subjoined judgment and decree.

[fol. 150] FINAL JUDGMENT AND DECREE OF THE TRIAL COURT

It is on this seventh day of November, 1938, Ordered, Decreed and Adjudged as follows:

The defendants Frank Hague individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, the Board of Commissioners of Jersey City, and the agents, servants, employees, deputies, and officers of the defendants and each of them, and all persons associated with or under the direction, supervision or control of the defendants or any of them are hereby perpetually enjoined and restrained:

A. Liberty of the Person

1. From directly or indirectly excluding or removing the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them from the City of Jersey City.

2. From directly or indirectly exercising any personal restraint over the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them except in so far as such personal restraint is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law.

3. From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right of free access to and locomotion on the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal [fol. 151] as speedily as is reasonably possible before a judicial officer under existing law.

B. Liberty of the Mind

1. Speaking other than at public meetings:

From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees

of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right to communicate their thoughts to other persons in and about the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law and except further this paragraph has no bearing upon the right of the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them to speak at public meetings which right is hereinafter dealt with.

2. Circulars, leaflets and handbills:

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants, or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the circulation or distribution by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City of pamphlets, circulars, handbills, emblems or any written or printed matter whatsoever; provided that (1) the said circulars, leaflets and handbills are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451), and provided (2) that the distribution of the said circulars, leaflets and handbills is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or [fol. 152] littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

3. Placards:

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the carrying of, or the display by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City, of placards, signs or any written of printed matter whatsoever, whether by walking to and fro with such written or printed matter affixed to their persons, or held in the hands, or

otherwise; provided that (1) the said placards, signs or any written or printed matter whatsoever are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) and provided (2) that the distribution of the said placards, signs or any written or printed matter whatsoever is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

4. Public Meetings:

(a) From placing any previous restraint upon or in any other manner whatsoever directly or indirectly interfering with the plaintiffs or any of them in respect to the holding of meetings or assemblies in the open air and in parks dedicated for the purposes of the general recreation of the public provided that an application for a permit to hold such meetings by or on behalf of said plaintiffs, or any of them has been made three days in advance of such meetings and provided further that such permit may be refused these plaintiffs or any of them only for the reason that the particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks.

[fol. 153] (b) From refusing to or withholding from the said plaintiffs or any of them applications for said permits as hereinabove provided such protection at said meetings or assemblies as is necessary to secure to said plaintiffs or any of them the opportunity to hold such meetings without interference from or interruption by such persons as may be present at said meetings provided only that such protection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City and provided further that the duty of the defendants to afford such protection to the holding of such meetings or assemblies as may be necessary for their peaceful continuance may be terminated by words or conduct of the plaintiffs or any of them in violation of existing law.

(c) From continuing their heretofore expressed refusal to grant permission to Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst,

and Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler upon applications dated December 17 and 23, 1937, respectively, and from continuation their heretofore expressed refusal to grant those said named speakers all the rights set forth in the preceding two paragraphs of this decree for injunction.

(d) From refusing to the plaintiffs or any of them the rights set forth in the three preceding paragraphs of this decree for injunction in so far as such rights may be sought with respect to public meetings on any of the public streets, highways, thoroughfares or places of the City of Jersey City (other than public parks) and unless and until the defendants acted in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares or places of the City of Jersey City provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpre-[fol. 154] tation by the defendants of the acknowledged easement of public passage over any of the said public streets, highways, thoroughfares or places of the City of Jersey City.

5. Formal:

From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person to commit or attempt to commit any of the things enjoined by this decree, or not to do anything required by this decree to be done.

ORDINANCES

An Ordinance to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets.

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain:

1. No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet.

2. No person shall distribute or cause to be distributed to the occupants of any house, place or cause to be placed into any areaway, in front of, or along the side of any house, or upon the doorstep thereof any newspaper, paper, periodical, book, magazine, circular, card or pamphlet, unless the same has been previously ordered by the person in actual occupation of the house, in the areaway of which, in front of which, or along the side or doorsteps of which said newspaper, paper, periodical, book, magazine, circular, card of pamphlet shall *shall* be distributed or placed.

3. Any person violating or causing to be violated, or consenting to, or permitting the violation of any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding Ten ($10.00) Dollars, or imprisonment for a period of not exceeding ten [fol. 155] (10) days in the city prison or the county jail, in accordance with the statutes in such cases made and provided, or both, for the first offense, and a fine of Twenty-five ($25.00) Dollars or imprisonment not exceeding thirty (30) days, or both, for each and every subsequent offense.

4. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the Police Courts of this City.

5. This ordinance shall take effect immediately.

Michael I. Fagen, Wm. B. Quinn, John Saul, A. Harry Moore, Frank Hague, Commissioners.

Passed January 22, 1924. Edward J. Holland, City Clerk.

An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage.

The Board of Commissioners of Jersey City Do Ordain:

1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of [fol. 156] all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both.

5. This ordinance shall take effect upon its final passage.

Introduced April 1st, 1930.
Adopted April 15th, 1930.
John Begagns, Michael I. Fagen, Arthur Potterton, William B. Quinn, Frank Hague, Commissioners.

Dated, City Clerk's Office, Jersey City, April 21st, 1930.
Edward J. Holland, City Clerk.

[fol. 157] IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION

DAVIS, dissenting:

It is with regret that I feel constrained to dissent in part from the conclusions of my colleagues.

The first conclusion from which I dissent is that of the question presented by this appeal. They say that it is "whether or not certain fundamental civil liberties safeguarded by the Constitution of the United States shall be observed and protected in Jersey City or shall there stand abridged". This statement "begs the question". It assumes that what the defendants, speaking of the parties as they stood in the District Court, did in Jersey City constituted an abridgment of these "fundamental civil liberties" and the only question would then be whether or not they should stand abridged in Jersey City and not elsewhere. The mere statement of that question answers itself. The

question, as I see it, is whether or not what the defendants did in Jersey City deprived the plaintiffs of any rights to which they were entitled under the Constitution of the United States. The answer to this question depends upon two further questions.

The first one is whether or not the ordinance, pursuant to which the permits were denied, is constitutional and if it is, the second question is whether or not the Director of Public Safety in denying the permits abused the discretion and authority which the ordinance vests in him.

The decree is divided into two parts: A., "Liberty of the Person", and B., "Liberty of the Mind". The substance of the restraints contained in the decree follows:

Under A., the Court enjoined the defendants:

1. From excluding or removing the plaintiffs, which includes in this decree, their agents, servants, employees and persons acting in sympathy and concert with them, from Jersey City;

2. From exercising any personal restraint over the plaintiffs except so far as such restraint is in accordance with any right of search and seizure and any right of arrest and [fol. 158] removal as speedily as is reasonably possible before a judicial officer under existing law, and

3. From interfering with plaintiffs in their right of free access to and locomotion on the public streets, highways, thoroughfares, parks and places of Jersey City except in so far as such interference is in acordance with any right of search and seizure, etc. as stated in No. "2" above.

There is no serious objection, as I understand it, to this part of the decree if it is construed not to interfere with what is generally accepted everywhere as legitimate work of police officers and detectives.

Under B., the court enjoined the defendants:

1. From interfering with the plaintiffs in their right to communicate their thoughts to other persons in and about the public streets, highways, thoroughfares, parks and places of Jersey City except in so far as such interference is in accordance with any right of search and seizure, etc. as stated above, except that this paragraph has no bearing upon the right of the plaintiffs to speak at public meetings;

2. From interfering with the plaintiffs in the circulation or distribution by them in the public streets, etc. of Jersey

City of pamphlets, circulars, handbills, or any written or printed matter whatsoever; provided that the circulars, pamphlets, etc. are in no respect "obscene, offense to public morals or an advocacy of unlawful conduct" and "that their distribution is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets * * *";

3. From interfering with the plaintiffs in carrying or displaying on the public streets, etc. of Jersey City placards, signs or any written or printed matter whatsoever; provided such matter is not obscene or against public morals and that the carrying of the placards is orderly and without molestation to the inhabitants of Jersey City and without littering the streets, etc.

[fol. 159] The decree is in these three respects, under "B.", proper and there is no real objection so far to it. The learned trial judge devoted only a small part of his opinion to the decree up to this point. The real contest in this case is concerned with B. 4. (a), (b), (c) and (d) in which the court enjoined the defendants as follows:

"4. Public Meetings:

(a) From placing any previous restraint upon or in any other manner whatsoever directly or indirectly interfering with the plaintiffs or any of them in respect to the holding of meetings or assemblies in the open air and in parks dedicated for the purposes of the general recreation of the public provided that an application for a permit to hold such meetings by or on behalf of said plaintiffs or any of them has been made three days in advance of such meetings and provided further that such permit may be refused these plaintiffs or any of them only for the reason that the particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks.

(b) From refusing to or withholding from the said plaintiffs or any of them applications for said permits as hereinabove provided such protection at said meetings or assemblies as is necessary to secure to said plaintiffs or any of them the opportunity to hold such meetings without interference from or interruption by such persons as may be present at said meetings provided only that such pro-

tection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City and provided further that the duty of the defendants to afford such protection to the holding of such meetings or assemblies as may be necessary for their peaceful continuance may be terminated by words or conduct of the plaintiffs or any of them in violation of existing law.

[fol. 160] (c) From continuing their heretofore expressed refusal to grant permits to Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst, and Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler upon applications dated December 17 and 23, 1937, respectively, and from continuation of their heretofore expressed refusal to grant those said named speakers all the rights set forth in the preceding two paragraphs of this decree for injunction.

(d) From refusing to the plaintiffs or any of them the rights set forth in the three preceding paragraphs of this decree for injunction in so far as such rights may be sought with respect to public meetings on any of the public streets, highways, thoroughfares or places of the City of Jersey City (other than public parks) and unless and until the defendants acting in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares or places of the City of Jersey City provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpretation by the defendants of the acknowledged easement of public passage over any of the said public streets, highways, thoroughfares or places of the City of Jersey City."

The ordinance * and the so-called "Home Rule" statute of New Jersey, pursuant to which the ordinance was passed, [fol. 161] are grounded upon the assumption that the streets and parks of Jersey City belong exclusively to the state

* "1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jer-

and it or the city, in so far as it has been authorized by the state to do so, may say whether or not parades or public meetings may be held on the streets or in the parks and under what conditions. That Jersey City has such authority has been settled in the courts of New Jersey, of Massachusetts, of Pennsylvania, of Illinois and of other states, and in the federal courts.

In Burlington v. Pennsylvania R. R. Co., 56 N. J. E. 259, 261, the court said:

"It is of course true that the public right, so far as it is concerned, is subject to the legislative control over streets. As to the public, the legislature can authorize the abandonment of a street in toto, or turn it in part over to a private enterprise. It may, therefore, legalize the operation of a steam railroad transversely or longitudinally over or along a highway. The legislative authority, however, must appear either in express terms or must flow as a necessary implication from powers expressly granted. State v. Warren Railroad Co., 5 Dutch. 353; Newark v. Delaware, Lackawanna and Western Railroad [fol. 162] Co., 15 Stew. Eq. 196; Hoboken Land and Improvement Co. v. Hoboken, 6 Vr. 295. The grant of power may be made directly by the legislature or it may be delegated to the government of a municipality. It may be con-

---

sey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County Jail for a period not exceeding ninety days or both."

tained in the charter of a city, in the charter of a railroad or in a general statute."

In Harwood v. Trembly, 97 N. J. L. 173, 175; 116 Atl. 430, 431, Chief Justice Gummere declared the law as follows:

"The streets of a city are common highways, primarily designed for the use of the public in passing and repassing and in such temporary occupancy as is incidental to the exercise of those rights. No one is justified in obstructing a public street by collecting therein a large assemblage of people for the purpose of delivering an address to them. The common highways of the state are not designed for the purpose of holding public meetings therein, and anyone who attempts to do this, without having first obtained permission from the public authorities in charge of such highways, commits a public nuisance. The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty than it permits him to occupy in invitum the private property of a fellow citizen for the same purpose. In order to protect the public in the full enjoyment of the city streets, the municipal authorities are clothed with the power of seeing that such enjoyment is not unnecessarily interfered with, and, in the exercise of that power, to take all reasonable steps to prevent such interferences."

In the case of Thomas v. Casey, 121 N. J. L. 185; 1 Atl. (2) 866, 870, Mr. Justice Bodine, in an able and well-reasoned opinion said:

"He (Thomas) has no more right to speak in public places in that city, such as highways and parks, without [fol. 163] permit than he has to invade a citizen's home without invitation."

In Commonwealth v. Davis, 162 Mass. 510, in which Davis spoke on the Boston Common without a permit in violation of a city ordinance, Mr. Justice Holmes said:

"There is no evidence before us to show that the power of the legislature over the common is less than its power over any other park dedicated to the use of the public or over public streets, the legal title to which is in a city or town. Lincoln v. Boston, 148 Mass. 578, 580. As representative

of the public, it may and does exercise control over the use which the public may make of such places, and it may and does delegate more or less of such control to the city or town immediately concerned. For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house."

In reviewing that case, (Davis v. Massachusetts, 167 U. S. 43) hereinafter called the Davis case, on appeal to the Supreme Court of the United States, Mr. Justice White affirmed the Massachusetts court as follows:

"It is, therefore, conclusively determined that there was no right in the plaintiff in error to use the common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe. The Fourteenth Amendment to the Constitution of the United States does not destroy the power of the States to enact police regulations as to the subjects within their control, Barbier v. Connolly, 113 U. S. 27, 31; Minneapolis & St. Louis Railway Co. v. Beckwith, 129 U. S. 26, 29; Giozza v. Tiernan, 148 U. S. 657; Jones v. Brim, 165 U. S. 180, 182, and does not have the effect of creating a particular and [fol. 164] personal right in the citizen to use public property in defiance of the constitution and laws of the State.

* * * * * * *

"The right to absolutely exclude all right to use, necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser. The finding of the court of last resort of the State of Massachusetts being that no particular right was possessed by the plaintiff in error to the use of the common, is in reason, therefore, conclusive of the controversy which the record presents, entirely aside from the fact that the power conferred upon the chief executive officers of the city of Boston by the ordinance in question may be fairly claimed to be a mere administrative function vested in the Mayor in order to effectuate the purpose for which the common was maintained and by which its use was regulated."

This case has been followed in many inferior federal courts. Mutual Film Co. v. Industrial Commission of Ohio, 215 Fed. 138; Lutz v. City of New Orleans, 235 Fed. 978; Community Chautauquas v. Caverly, 244 Fed. 893; Lane v. Whitaker, 275 Fed. 476; Buck v. Kuykendall, 295 Fed. 197; Capital Taxicab Co. v. Cermak, 60 Fed. (2d) 608; Sullivan v. Shaw, 6 Fed. Supp. 112.

The specific point here presented was absolutely settled in the Davis case and if the law there declared is still the law, it is conclusive of the issues here involved and the District Court and this court have overruled the Supreme Court. This they both seek to avoid in two ways:

They say that the case at bar can be distinguished from the Davis case and that in any event the Supreme Court in later cases has "modified" the law there announced.

They seek to distinguish this case from the Davis case by the fact that in that case no application was made for a [fol. 165] permit, but in this case there was. This is a "distinction without a difference". The Supreme Court thought so little of the fact that no application was made in the Davis case that it did not even mention that fact, but discussed the questions on their merits and declared the law. If the ordinance in the Davis case was void, it was void on its face and Davis with or without an application was entitled to test its validity, Lovell v. Griffin, 303 U. S. 444, 552, and this he did.

The attempted distinction does not avoid the difficulty which this court had in trying to get around the Davis case and so it says that the law declared in that case has been "modified" in later decisions of the Supreme Court. The majority opinion shows that by "modified" is meant changed, overruled. The opinion in the Davis case was delivered more than forty years ago and no other court has found that the law has been "modified" or in any way changed, but every court, state and federal, which has considered the identical question sub judice has relied upon that case for the law there announced.

This court says that the Davis case has been "modified" by the cases of Gitlow v. New York, 268 U. S. 652; Fiske v. Kansas, 274 U. S. 380; De Jonge v. Oregon, 299 U. S. 353; Near v. Minnesota, 283 U. S. 697; Lovell v. Griffin, 303 U. S. 444. A case is "modified", changed or overruled expressly or by necessary implication.

There is not a line, word or even a hint, in those cases expressly modifying, changing or overruling the Davis case and I do not think that they have done so by necessary implication.

To repeal a statute or overrule a decision by implication is an unpopular doctrine and it is not usually done. The recent references to the Davis case by the Supreme Court indicate that the law as there laid down still stands and has not been "modified". Packard v. Banton, 264 U. S. 140, 145; Title Co. v. Wilcox Building Corporation, 302 U. S. 120, 128. It is true that the issue in these cases was not [fol. 166] abridgment of the freedom of speech, but the Davis case was cited as authority for the law they were declaring without a hint or an implication that the doctrine of that case had been "modified".

In the Gitlow case, Gitlow was indicted, tried and convicted for criminal anarchy which advocates the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or executive officials thereof. The defendant contended that the statute against criminal anarchy was in contravention of the due process clause of the Fourteenth Amendment. The Supreme Court affirmed the judgment and in its opinion said:

"That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen. The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the State is acting arbitrarily or unreasonably when in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it had enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer

the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger [fol. 167] of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipiency. In People v. Lloyd, supra, p. 35, it was aptly said: 'Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed and intended to overthrow the government without waiting until there is a present and imminent danger of the success of the plan advocated. If the State were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.'

"We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the State unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality."

The judgment of conviction was affirmed and instead of modifying the law of the Davis case, this case rather affirms it.

Fiske v. Kansas, 274 U. S. 380, 387, was a case in which Fiske was indicted, tried, convicted and sentenced for violating the statute of Kansas against Criminal Syndicalism which is defined as the doctrine that advocates crime, physical violence, arson, destruction of property, sabotage, or other unlawful acts or methods as a means of effecting industrial or political ends, or as a means of effecting political revolution.

All that was proved against Fiske was that he solicited and secured members in an organization which it was charged violated the Criminal Syndicalism Act. The court said:

"The result is that the Syndicalism Act has been applied in this case to sustain the conviction of the defendant, without any charge or evidence that the organization in which [fol. 168] he secured members advocated any crime, violence or other unlawful acts or methods as a means of effecting industrial or political changes or revolution. Thus applied the Act is an arbitrary and unreasonable exercise of the police power of the State, unwarrantably infringing

the liberty of the defendant in violation of the due process clause of the Fourteenth Amendment."

In other words, Fiske was convicted without any evidence whatever to establish the crime of which he was charged and convicted. It was held that this violated the due process clause of the Fourteenth Amendment.

Near v. Minnesota, 283 U. S. 697, involved a suit to suppress a newspaper for criticising certain public officials for the alleged prevalence and protection of crime, on the ground that the criticism was "malicious, scandalous and defamatory". The court held that under the circumstances of that case previous restraint of publications, was an infringement of the liberty of the press guaranteed by the Fourteenth Amendment, but the libeler remained civilly and criminally responsible for his libel.

In the case of DeJonge v. Oregon, 299 U. S. 353, DeJonge was indicted, tried and convicted for violating the Criminal Syndicalism Law of Oregon for assisting in the conduct of a meeting which was called "under the auspices of the Communist Party, an organization advocating criminal syndicalism."

At the trial DeJonge moved for the direction of acquittal on the ground that the statute as applied to him for merely assisting at a meeting of the Communist Party at which nothing unlawful was done or advocated, violated the due process clause of the Fourteenth Amendment. The motion was denied and he was convicted.

The offense for which DeJong was convicted and sentenced to imprisonment for seven years was assisting in the conduct of a meeting which was orderly and in which no unlawful act was advocated or committed. His apparent, [fol. 169] sole offense was that he took part in a meeting held under the auspices of the Communist Party.

On appeal, the Supreme Court said:

"It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings, cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting

is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects."

In Lovell v. Griffin, 303 U. S. 444, Alma Lovell was convicted in the Recorder's Court of the City of Griffin, Georgia, and was sentenced to imprisonment for fifty days in default of the payment of a fine of fifty dollars for distributing a pamphlet and magazine in the nature of religious tracts without securing a permit, in violation of a city ordinance which provided that the distribution of circulars, handbooks, advertising, or any other kind of literature without first obtaining written permission from the City Manager was a nuisance and punishable as an offense against the City. The Superior Court of the County refused a review and the Supreme Court of Georgia denied an application for certiorari.

There was no restriction in the application of the ordinance with respect to time and place. "It is not limited to ways which might be regarded as inconsistent with the maintenance of public order or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets." The court held that, "Whatever the motive which induced its adoption, its character is such that it [fol. 170] strikes at the very foundation of the freedom of the press by subjecting it to license and censorship".

The cases of Near v. Minnesota, supra; DeJonge v. Oregon, supra, and Lovell v. Griffin, supra, more nearly resemble the case at bar than any of the others. The contentions made in them were direct challenges to the rights safeguarded and guaranteed by the Fourteenth Amendment and the conclusions reached by the Supreme Court were inevitable. The Minnesota case was a plain attempt to suppress a newspaper because it criticised public officers for alleged protection of corruption. The DeJonge case was nothing more than an attempt to punish a citizen by imprisonment for seven years for assisting in the conduct of a peaceful, orderly and lawful meeting held under the auspices of the Communist Party. The Lovell case was an attempt to punish a person for distributing religious tracts which set forth the tenets of her faith.

These cases and the statutes or ordinances, under which they were brought are a long way from the case at bar. The ordinance here under consideration was passed for self

protection and self preservation. As Chief Justice Hughes said in the Gitlow case, "the State is primarily the judge of regulations required in the interest of public safety and welfare". The passage of the ordinance by Jersey City was state action, Lovell v. Griffin, supra, and its adoption was the promulgation of regulations which the state of New Jersey judged to be required in the interest of the public safety and welfare of its people. It was adopted for the express purpose of preventing riots, disturbances and disorderly assemblage and this the city and state had the right to do. The right of self-preservation is an inherent function of government. "In maintaining this guaranty (of the fundamental rights of person and property) the authority of the State to enact laws to promote the health, safety, morals and general welfare of its people is necessarily admitted." Near v. Minnesota, supra. Any interference with freedom of speech or of the press was incidental. As Chief [fol. 171] Justice Hughes said in the DeJonge case, if the rights of free speech and peaceable assembly are to be preserved, the question is not as to the auspices under which a meeting is held, but as to its purpose. No case has been cited holding that an ordinance passed for the safety, protection and welfare of a city, when properly administered, is unconstitutional. The cases upon which the majority opinion rests for a modification of the law declared in the Davis case, do not even mention that case. In the DeJonge case, the Chief Justice said: "None of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application". The decision in the Davis case must be included in "our decisions" mentioned in the DeJonge case. Accordingly when the Jersey City ordinance is properly applied, it does not curtail the right of free speech and free assembly within the meaning of the Constitution of the United States and the decisions of the Supreme Court.

The next question is whether or not the Director of Public Safety of Jersey City abused the authority vested in him by the ordinance in denying permits to the plaintiffs. In order to determine this question it is necessary to know and consider at least some of the facts and circumstances surrounding his refusal. Of course, he must faifly investigate all the facts and circumstances pertinent to an application and must honestly "believe it to be proper to refuse the is-

suance" of a permit "for the purpose of preventing riots, disturbances or disorderly assemblage" or some of them. The facts and circumstances must be sufficient to enable a reasonable man to come to that belief before he may refuse.

The plaintiffs informed the Director that Roger N. Baldwin, among others, was to speak at the meeting for which they sought a permit. Their application had been given wide publicity and a great deal of agitation and excitement had arisen over this and the proposed "invasion" of Jer- [fol. 172] sey City by the plaintiffs and others who were associated with them. Thereupon the following letter was written to the Director:

"Committee of Veterans of Jersey City,

921 Bergen Avenue,

Jersey City, N. J. December 27, 1937.

Hon. Daniel Casey, Department of Public Safety, Jersey City, N. J.

DEAR COMMISSIONER:

We understand from the newspapers that there is pending before you now an application for a permit to hold an open air public meeting in this City.

Among the speakers listed for the meeting is one Roger N. Baldwin, whose record was published in this afternoon's newspapers. In that record we find a conviction by a United States Court for draft dodging and a prison sentence of one year in the Essex County Penitentiary. We consider any man convicted of this crime to be thoroughly Un-American in his principles and unworthy of receiving any consideration at the hands of the City Officials, at least to the extent of granting him permission to speak in this City at a public meeting.

We hereby protest against the granting of the permit to Roger N. Baldwin, or to any members of the Un-American group he represents, irrespective of what they claim to be the purpose of their meeting. We demand that you withhold action on this application.

The reason for requesting delay is that we wish to assemble in a body at the Jersey City Armory on Tuesday, tomorrow evening, in order that we may prepare and have adopted by the full membership of all the Veterans' Or-

ganizations in Jersey City, resolutions of protest against allowing this "slacker" or any of his type, to appear publicly [fol. 173] in Jersey City, whose citizens are devoted to American principles and the upholding of our American Constitution.

Please give us a prompt answer to this letter.

Very truly yours, Davis A. Nimmo, Past Commander, Hudson County, Amer. Legion. Charles A. Peterson, Past State Commander, V. F. W. Louis F. J. Borgers, Commander, Quinn Post, American Legion. William E. Malinka, American Legion. Hugh A. Kelly, Commander, Jersey City Post, Amer. Legion. George A. Reilly, Adjutant, Jersey City Post A. L."

More than three thousand veterans of Jersey City met the next day, December 28, 1937, and passed a resolution which they sent to the Director. Among those present were representatives of the American Legion, Veterans of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars, United Spanish American War Veterans.

The resolution reads in part as follows:

"Whereas, in his testimony before the Fish Congressional Committee he (Roger N. Baldwin) did testify that force, violence and murder may be resorted to for the overthrow of government, his testimony being as follows:

The Chairman: Does your organization uphold the right of a citizen or alien—it does not make any difference which—to advocate murder?

[fol. 174] Mr. Baldwin: Yes.

The Chairman: Or assassination?

Mr. Baldwin: Yes.

The Chairman: Does your organization uphold the right of an American citizen to advocate force and violence for the overthrow of the Government?

Mr. Baldwin: Certainly, in so far as mere advocacy is concerned.

The Chairman: Does it uphold the right of an alien in this country to urge the overthrow and advocate the overthrow of the government by force and violence?

Mr. Baldwin: Precisely on the same basis as any citizen.

The Chairman: You do uphold the right of an alien to advocate the overthrow of the government by force and violence?

Mr. Baldwin: Sure; certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited.

Whereas, the same Roger N. Baldwin is now the leading advocate of the C. I. O. movement; and

Whereas, the C. I. O., in permitting this man to be its spokesman stands accused of condoning his Un-Americanism and Communistic leanings, and the C. I. O. should be condemned for its Un-American tactics, * * *

* * * * * * * * *

* * * "Now, Therefore, Be it * * *

Resolved that we request the said Daniel Casey, Director of Public Safety, to refuse and deny the application made for such a permit, and be it Further

[fol. 175] Resolved, that we now record our firm opposition and protest against allowing this slacker and his Communistic associates to appear publicly in Jersey City, whose citizens are devoted to American principles and the upholding of our American traditions, and be it Further

Resolved, that we consider a man convicted of the crime of evading the draft to be thoroughly Un-American in his principles and uworthy of receiving any consideration at the hands of public officials, especially the right to speak from a public platform in the streets of Jersey City, and that we also consider that any organization which permits this man to be associated with them is also unworthy of any consideration on the part of public officials and they should not be given the right to use our public streets for the purpose of spreading Communistic and Un-American doctrines" * * *.

Local unions affiliated with the American Federation of Labor and many others sent additional protests to the Director.

The plaintiffs had been trying for some time to secure permits to hold public meetings in Jersey City at which Norman Thomas, Roger N. Baldwin and others were to speak. Many newspapers circulated in Jersey City contained statements

of an intended "invasion" of Jersey City by the C. I. O. For instance, the following appeared in the Newark Evening News, the largest newspaper in New Jersey and one of the most reliable in the country:

"C. I. O. Prepared
For Invasion
Mass Drive by 3,000 to Be
Launched Monday in
Jersey City

Final plans for their invasion of Jersey City were completed last night by New Jersey C. I. O. leaders. A mass or- [fol. 176] ganization drive by 3,000 C. I. O. representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city.

Aside from field organizers of international unions, more than 28,000 volunteers will distribute leaflets in an area bounded by Bay and 17th Streets, Jersey City. Of that number more than 2,000 will be from the International Maritime Union.

Other organizations which will send groups include the Civil Liberties Union, International Labor Defense, Workers Defense League and the Hudson County Committee for Civil Rights.

Many Arrests Expected

Those participating in the drive will assemble in Jersey City at a given point. They will then march to the city's largest plants where leaflets will be handed out. Many arrests are expected in view of the city's ordinance prohibiting distribution of leaflets.

William J. Carney, C. I. O. regional director and leader of the drive, will go to Washington tomorrow to confer with a member of the Senate Civil Liberties Committee. Carney said a member of the committee will be in Jersey City Monday as an observer.

"Showdown with Hague"

Carney added:

"Our plans for a showdown between C. I. O. and I-Am-The-Law-Hague have been completed. We will go to Jersey City to organize in a peaceful manner. Whether this

will be possible in the face of denials of civil rights in that city I am unable to say at this time.

"Workers in Hudson County have even been denied the right to strike. Police of Jersey City have tried to stop picketing without a court injunction, so easily obtained in Hudson County.

[fol. 177] "When our organizers enter Jersey City they are stopped by police, threatened and searched. The contents of their cars are strewn over the highway. At our organization meetings police even threaten the workers *wot* attend. Hague has gotten away with this too long.

"The Acts of various Jersey City officials may very well come within the scope of prosecution and indictment by the Federal Government. Various acts committed by Jersey City officials are crimes under the United States Criminal Code, punishable by a heavy fine and imprisonment up to ten years.

"Section 51 of the code prohibits conspiracy to injure persons in exercise of civil rights. Section 7 of the Wagner Act says employees shall have the right to join or assist labor organizations and to engage in concerted activities for mutual aid and protection.

"Hague may be the law in Jersey City, but he is not the law of the country."

The plaintiffs now say that these accounts were only headlines and no such numbers invaded Jersey City as the papers stated. However that may be, it might be pertinent to ask who was responsible for the headlines and statements, for such papers as the Newark Evening News are not in the habit of publishing unreliable information and the Director did not and could not know what was going to happen for it evidently was not he who informed the newspapers of the reported "invasion". He was justified in believing and seriously considering what such newspapers said.

The newspapers circulated in Jersey City at this time carried pictures of Norman Thomas and other socialists and communists at the May Day Celebration in New York City giving the communistic clenched-fist salute and singing the Internationale.

[fol. 178] These things show only in part what was going on in and about Jersey City. All of this had the tendency to excite and doubtless did excite, incite and inflame the people of Jersey City and especially the veterans. The

Director had a serious situation with which to contend. The responsibility rested upon him. He was urged on every hand to refuse the permit under threatened violence. Finally after investigating the facts and circumstances pertinent to the application, he wrote the following letter, on December 30, 1937, to the attorney of the plaintiffs refusing the permit.

"Department of Public Safety,

City Hall,

Jersey City, N. J.

December 30, 1937.

Spaulding Frazer, Esq., 744 Broad Street, Newark, New Jersey

DEAR SIR:

I hereby answer your letter of December 23, 1937, addressed to me as Director of Public Safety, in which you make application for a permit to hold on open air meeting in Jersey City, which meeting will, according to you, be addressed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al. Barkin, Sam Macri and John Kiesler.

On receipt of your letter, I sent you a communication, dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all of the facts and circumstances pertient to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain Veterans' organizations of Jersey City, protesting against the granting of a permit to Roger N. Baldwin or to any members of the group he represents, to hold a meeting. The letter demanded that I withhold action on [fol. 179] your application. I attach a copy of the Veterans' letter to this communication.

On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over three thousand persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of the permit. Violent disorder was threatened on the part of the veterans in case the meeting

was held. Announcements were made from the floor—and these announcements had the approval of the meeting—that if I should refuse to honor the Veterans' protest and grant a permit for the meeting, the Veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the Veterans at the meeting. . .

The Chamber of Commerce, representing the business interest of Jersey City, have gone on record against the granting of this permit.

The Central Labor body of Hudson County has gone on record against the granting of this permit.

Other bodies of citizens have opposed it, and individuals of influence in the community have protested to me against the holding of the meeting. Other facts and circumstances pertinent to your meeting, in addition to those herein called to your attention, convince me that the granting of the permit you request would lead to riots, disturbances and disorderly assemblage.

Therefore, I hereby refuse to issue the permit for an open air meeting requested by you in your letter of December 27, 1937, and my refusal is for the purpose of preventing riots, disturbances and disorderly assemblage.

Very truly yours, Daniel Casey, Director."

[fol. 180] The refusal of the permit was a ministerial act on the part of the Director and unless he grossly abused the discretion and authority which the ordinance vested in him, his action should not be reversed and the judgment of the court substituted for his. Gaines v. Thompson, 74 U. S. 347; Ness v. Fisher, 223 U. S. 683; Louisiana v. McAdoo, 234 U. S. 627, 633; Work v. Rives, 267 U. S. 175, 183; Proctor & Gamble Co. v. Coe, 96 Fed. (2d) 518, 520.

The Supreme Court of New Jersey found in the Thomas case, supra, that he had not abused his discretion or authority. Mr. Justice Bodine who wrote the opinion in that case said, "The Director of Public Safety knows the temper of the people he serves". He represented Jersey City and if a riot, disturbance or disorderly assemblage had resulted from the granting of the permit the city would have been responsible. The Statute of New Jersey on this subject provides that:

"Any person who, by reason of mob violence as defined and stated in sections 2:152-1 to 2:152-3 of this title, suffers material damage to his property or injury to his person shall have an action against the city in which such damage is suffered or injury inflicted, or, if not in a city, then against the county in which such damage is suffered or injury inflicted for such damages as he may sustain, to an amount not exceeding five thousand dollars." Revised Statutes of New Jersey, 2:63-10 7.

Under similar statutes or ordinances, municipalities in many states have been held liable for large damages caused by mobs, riots and disorderly assemblages. Right now the Apex Hosiery Company is suing the City of Philadelphia for more than $3,000,000 damages resulting from riots, disturbances or disorderly assemblage. In honestly administering this ordinance, who could say with any degree of certainty that as the result of the issuance of the permit in question, a mob, riot or disorderly assemblage would not [fol. 181] have occurred and that considerable damage to persons or property or both would not have been done. Whose judgment under these circumstances was to be followed, the Director's, the District Court's or this court's? The ordinance says the Director's. The Supreme Court of New Jersey said the Director's. The Supreme Court of the United States in the Davis case said the Director's and every other court in the country which has considered the question under similar ordinances and circumstances, has said the Director's and not the court's.

I have not forgotten that the plaintiffs charged that the officials of Jersey City influenced and intimidated the owners of private halls against the plaintiffs so that they would not rent them for meetings; and further that they incited and stirred up the various organizations to protest against granting permits for public meetings. All of this the defendants denied.

The learned trial judge who saw all the witnesses and was in the atmosphere of the trial for weeks refused to find that the evidence sustained the charge that the officials of Jersey City influenced and intimidated the owners of private halls. He also refused to find that they or any of them had incited or stirred up the people to protest. Yet this court, in effect overruling the learned trial judge, and in the face of the statement of counsel for the plaintiffs, when

arguing this case, that Mayor Hague was one of the most honest witnesses he had ever seen on the stand, found that the defendants, notwithstanding the Mayor's denial, "endeavored to build up a dangerous situation, one in which sympathizers of the appellees could not safely speak" though it had never seen or heard a single witness testify.

Thousands of permits, we are told, were issued in the past, but the Director refused to issue a permit to plaintiffs. This alone shows discrimination in the opinion of this court, but this is a non sequitur. The facts and circumstances under which a meeting is to be held determine whether a permit should be issued or refused and whether or not dis- [Fol. 182] crimination has been practiced. The Director may grant one permit and refuse another the same day without denying "any person" "the equal protection of the laws" as required by the Fourteenth Amendment. If the Director had reasonable grounds to believe that the meeting for which he refused a permit would have resulted in riots, disturbances or disorderly assemblage, or any one of these, and that those meeting for which he granted permits would not, his refusal did not discriminate against "any person", or deny to him "the equal protection of the laws".

We do not have in this case the naked question of the right of free speech or free assembly within the meaning of the Constitution of the United States. The issue here is not primarily free speech at all, but the plaintiffs are seeking to make it such. We have here a number of individuals and organizations which have combined and are masquerading under the flag of free speech as though this were the sole issue.

If the primary question here were the maintenance of free speech, the defense of the Constitution of the United States or the principles upon which democracies are founded, can anyone doubt where these protesting organizations—The American Legion, Veterans of Foreign Wars, Hudson County American Legion, and others—would stand? Many of these men have risked their very lives in the service of their country, "to make democracy safe for the world", to defend free speech, the Constitution of the United States and the principles upon which democracies are built.

The defendants contend that the District Court was without jurisdiction in this case. The plaintiffs, on the contrary, say that it has jurisdiction under sections 24 (1) and 24 (14) of the Judicial Code. This was averred in paragraphs 6 and 7 of the bill. It is alleged in paragraph 6 that this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, in which the amount in controversy exceeds $3,000 exclusive of interest [fols. 183-184] and costs. This allegation was based upon Title 28 U. S. C. A. section 41 (1), Sec. 24 (1) Judicial Code.

Did the value of the civil rights of which the plaintiffs alleged they were deprived exceed $3,000, exclusive of interest and costs?

There is no allegation as to the value of these rights except the bald statement that they exceed $3,000. Of course, as the majority opinion says, in tort actions, the jury in a proper case, when the damnum is sufficiently laid, may award exemplary damages which may be added to the actual damages suffered in order to make up the jurisdictional amount. Barry v. Edmunds, 116 U. S. 550; Scott v. Donald, 165 U. S. 58, 89. Where the plaintiff in good faith claims the jurisdictional amount in damages, it is sufficient, if not traversed, to give the court jurisdiction. Wiley v. Sinkler, 179 U. S. 58; Smithers v. Smith, 204 U. S. 632. But where the sufficiency of the jurisdictional amount is timely and appropriately challenged, as was done in the case at bar, the plaintiff must support the allegations by competent proof. The burden of establishing the jurisdictional facts is on the plaintiff throughout the litigation. Kvos v. Associated Press, 299 U. S. 269. This the plaintiffs did not do. There is not a word showing the pecuniary value of the rights of which they complain they were deprived and the finding of fact as to this value was a mere guess.

However, I think that the court had jurisdiction under section 24 (14) of the Judicial Code as this court found.

The decree of the District Court should be affirmed as to A. 1 2, and 3 and B. 1, 2 and 3, but reversed as to B. 4 (a) (b), (c) and (d).

A true Copy. Teste:

_____, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 185] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1938

No. 6939

FRANK HAGUE, Individually and as Mayor of Jersey City; Daniel J. Casey, Individually and as Director of Public Safety of Jersey City; Harry Walsh, Individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, Defendants-Appellants,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union, Plaintiffs-Appellees

Appeal from the District Court of the United States, for the District of New Jersey

JUDGMENT—Filed January 26, 1939

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby modified by striking from paragraph B4 (d) thereof the words "and unless and until the defendants acted in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, throughfares or places of the City of Jersey City" and in all other respects affirmed with costs.

Philadelphia, January 26, 1939.

Albert B. Maris, Circuit Judge.

[File endorsement omitted.]

[fol. 186] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 187] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 6, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 6 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 651

FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH, Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Petitioners;

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, UNITED RUBBER WORKERS OF AMERICA, WILLIAM J. CARNEY, WILLIAM J. TRAYNOR, WILLIAM P. McGINN, SAMUEL MACRI, JAMES P. SWEENEY, DANIEL J. FOLEY and AMERICAN CIVIL LIBERTIES UNION,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

JAMES A. HAMILL,
JOHN A. MATTHEWS,
CHARLES HERSHENSTEIN,
EDWARD J. O'MARA,
Counsel for Petitioners.

INDEX.

	PAGE
I—Summary Statement of Matters Involved	2
A. The street meeting ordinance of Jersey City	2
B. Lack of jurisdiction in the trial court over the subject matter	4
II—Reasons Relied on for the Allowance of the Writ	6
Opinions of the Courts Below	11
Jurisdiction	11
Statement of the Case and Questions Involved	11
Specifications of Errors	11
Summary of Argument	12
Argument:	
I—The decision of the Circuit Court of Appeals in respect to the street meeting ordinance is in conflict with the decision of this Court in *Davis* v. *Massachusetts*, 167 U. S. 43; an important question of constitutional law is thus presented which should be settled by this Court	12
II—The decision of the Circuit Court of Appeals in respect to the street meeting ordinance is also in conflict with the decisions of the Courts of New Jersey in *Thomas* v. *Casey*, 121 N. J. L. 185 and *Harwood* v. *Trembley*, 97 N. J. L. 173; an important conflict between Appellate Courts exercising jurisdiction in the same State is thus presented which should be settled by this Court	19
III—Certiorari should issue because the Circuit Court of Appeals has construed Judicial	

PAGE

Code, Sections 24(1) and 24(14) in conflict with applicable decisions of this Court and with the weight of authority in the inferior federal courts 21

IV—Certiorari should issue in this case because public policy requires a prompt determination by this Court of the respective rights and duties of municipalities in regulating and controlling the use of public streets and places, on the one hand, and the relation thereof to the fundamental rights of free speech, assembly and press, on the other 27

Appendix 31

Appendix 33

TABLE OF CASES CITED:

Barry v. *Edmunds*, 116 U. S. 550 9

Burlington v. *Pennsylvania Railroad Company*, 56 N. J. Eq. 259, 261 4

Commonwealth v. *Davis*, 162 Mass. 510 ..... 6, 15

Coughlin, et al. v. *Sullivan*, 100 N. J. L. 42 20

Davis v. *Massachusetts*, 167 U. S. 43 ..6, 7, 12, 14, 15, 17, 18

De Jonge v. *Oregon* 18

Fiske v. *Kansas*, 274 U. S. 380 18

Genera Furniture Co. v. *S. Karpen & Bros.*, 238 U. S. 254 ..... 6, 27

Gitlow v. *New York*, 268 U. S. 652 18

Gobitis v. *Minersville School*, 21 Fed. Supp. 581 (D. C. E. D. Pa.) 9, 25

Hamilton v. *Regents University of California*, 293 U. S. 245, 261 25

Harwood v. *Trembley*, 97 N. J. L. 173 ..... 7, 19, 20

Healey v. *Ratta*, 292 U. S. 263 23

Holt v. *Indiana Mfg. Co.*, 176 U. S. 68 ..... 9, 25, 27

PAGE

Hurn v. *Oursler*, 289 U. S. 238, 246 ..... 6, 27

Kurtz v. *Moffitt*, 115 U. S. 487 ..... 9, 23
Kros v. *Associated Press*, 299 U. S. 269 23

Lovell v. *City of Griffin*, 303 U. S. 444 ..... 2*n*, 18

Marcus Brown Holding Co. v. *Pollak*, 272 Fed. 137 (D. C. S. D. N. Y.) 9, 25
Miller v. *First Service Corp.*, 84 F. (2d) 680 (C. C. A. N. D., 1936) 23

Near v. *Minnesota* 18
New England Mortgage Security Co. v. *Gay*, 145 U. S. 123 23
Nixon v. *Herndon*, 273 U. S. 536 ..... 9, 23

Slaughter House Cases, 16 Wall. 36 25
Smith v. *Adams*, 130 U. S. 167 ..... 9, 23
Smith v. *U. S.*, 157 Fed. 721 25
State of Ohio v. *Cox*, 257 Fed. 334 24

Thomas v. *Casey*, 121 N. J. L. 185 ..... 7, 8, 19, 20

U. S. v. *Cruikshank*, 92 U. S. 542 25

Wheless v. *St. Louis*, 180 U. S. 379 ..... 9, 23
Wiley v. *Sinkler*, 179 U. S. 58 ..... 9, 23

Youngstown Bank v. *Hughes*, 106 U. S. 523 23

OTHER AUTHORITIES CITED:

Act of Congress, February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. Sec. 347a, Judicial Code Sec. 240a) 11

Civil Rights Act:
Act of April 20, 1871, c. 22, Sec. 1, 17 Stats. 13, 8 U. S. C., Sec. 43 3

Constitution of the United States of America:
14th Amendment 2*n*, 3, 6, 11, 14, 15, 18, 26
13th Amendment 25

PAGE

Judicial Code:
Section 24 (1) 9, 10, 12, 21, 22, 23, 24
Section 24 (14) 5, 9, 10, 12, 21, 22, 24, 25, 26, 27

New Jersey Home Rule Act, P. L. 1917:
Ch. 152 ..... 4, 13

Revised Statutes of New Jersey:
40:48-1, 40:67-1 33

United States Supreme Court Rules:
Rule 38 19

28 U. S. C.:
Section 41 (1) 9, 21
Section 41 (14) 5, 9, 21, 22

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. ——

FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH, Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, UNITED RUBBER WORKERS OF AMERICA, WILLIAM J. CARNEY, WILLIAM J. TRAYNOR, WILLIAM P. McGINN, SAMUEL MACRI, JAMES P. SWEENEY, DANIEL J. FOLEY and AMERICAN CIVIL LIBERTIES UNION,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Frank Hague, individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City, respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit to review the judgment of that Court entered in this case on January 26, 1939, and therefore show as follows:

I. *Summary Statement of Matters Involved.*

A. The street meeting ordinance of Jersey City.

A final decree of injunction was entered in the United States District Court for the District of New Jersey against petitioners on November 7, 1938, in a suit which had been instituted against them by respondents.

The decree, among other things, in substance, enjoined petitioners from: (a) interfering with the holding by respondents of meetings in the open air and in parks except when in reasonable conflict with the public recreational purposes of said parks; (b) withholding protection for said meetings; (c) continuing their expressed refusal to grant permits to certain named individuals; (d) refusing permits for public meetings on the public streets of Jersey City unless and until all street meetings are forbidden; and (e) from aiding or abetting in any manner whatsoever any person to commit or attempt to commit any of the things enjoined by said decree or not to do anything required to be done. The decree enjoined other alleged illegal acts on the part of the petitioners, such, for instance, as forbidding the distribution of circulars,* but all of the questions arising out of these acts, with the exception of the carrying

* In 1924 an ordinance had been adopted by Jersey City forbidding the distribution of circulars in the public streets and other public places (R. Vol. I, p. 22). This ordinance had been held valid by the New Jersey Supreme Court in *Coughlin, et al.* v. *Sullivan*, 100 N. J. L. 42. Subsequent to the filing of the bill of complaint in this case, this Court had held in *Lovell* v. *City of Griffin*, 303 U. S. 444, that to prevent the distribution of circulars violated the 14th Amendment. Since that time the City has not attempted to prevent the distribution of circulars and does not intend to do so. This was stated during the trial of the case and at the argument in the Circuit Court of Appeals.

of placards in a manner which would conflict with the street assembly ordinance, are really now moot because petitioners took the position before the lower courts that they did not intend to continue the same, and, in fact, have not done so. Consequently no argument is made about these matters, except as the carrying of placards may come within the street assembly ordinance. However, petitioners have urged that the Court was without jurisdiction to maintain the entire suit, and, of course, if the Court was without jurisdiction, the injunction as to these other matters would be improper.

On appeal to the Circuit Court of Appeals for the Third Circuit, that Court affirmed the judgment and decree in all respects, except that it eliminated therefrom that portion of provision (d), which made the operation of the injunction with respect to street meetings dependent upon the continued failure of the petitioners herein to adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public places of Jersey City. The judgment of affirmance was by a divided court.

In the court below respondents complained, *inter alia*, that the petitioner Casey, as Commissioner of Public Safety of Jersey City, had refused to grant to persons acting under the auspices of respondents, permits to speak in the streets and public places of Jersey City. It was alleged that such refusal constituted a deprivation of the rights of respondents under the 14th Amendment to, and other provisions of the Constitution of the United States and the Civil Rights Act (Act of April 20, 1871, c. 22, Sec. 1, 17 Stats. 13, 8 U. S. C., Sec. 43). The District Court sustained respondents' contention and issued an injunction of the purport above set forth. As previously

stated, this was affirmed with the modification which expanded it.

The denial of permits to speak in public places was based upon an ordinance of Jersey City, entitled "An Ordinance to preserve public peace and good order and to prevent riots, disturbances and disorderly assemblage" (R. Vol. I, p. 26)*. Said ordinance was enacted in pursuance of two separate and distinct provisions of the New Jersey Home Rule Act, P. L. 1917, Ch. 152, under which, (1) the Legislature delegated to the governing body of every municipality power to make, amend, repeal and enforce ordinances to "preserve the public peace and order, to prevent and quell riots, disturbances and disorderly assemblages" (R. S. Sec. 40:48-1)*; and, (2) the further power to "prescribe the time, manner in which, and terms upon which, persons shall exercise any privileges granted to them in the use of any street, highway, alley or public place * * *" (R. S. Sec. 40:67-1)*. Under the latter provisions the State of New Jersey has delegated to its municipalities its title, as trustee for the public at large, in and to the public streets and places of such municipalities. *Burlington* v. *Pennsylvania Railroad Company*, 56 N. J. Eq. 259, 261. The question presented on this phase of the case is whether the ordinance conflicts with the federal constitution.

B. Lack of jurisdiction in the trial court over the subject matter.

The bill of complaint alleged that the value of the matter in controversy exceeded $3,000, exclusive of interest and costs. This was challenged by traverse

* See Appendix.

to the answer and by motion to dismiss the bill for lack of jurisdiction. Despite this challenge, no proof whatever as to the value of the amount in controversy was offered by respondents, either as to the damages which they had sustained or might sustain by reason of the acts complained of, or the value of any of the rights of which they alleged they were deprived. Notwithstanding this, the District Court found that the rights of the respondents and each of them alleged to have been interfered with, "have a value as to each plaintiff (respondent) in excess of the sum of $3,000, exclusive of interest and costs." The Circuit Court of Appeals affirmed this holding and also rested jurisdiction upon Section 24 (14) of the Judicial Code, 28 U. S. C. Section 41 (14).

With respect to the alternative claim of jurisdiction under Section 24 (14), petitioners contended below, and respectfully urge here, that the rights "secured" by the federal constitution, within the true intention of said subdivision, connote rights created in the first instance by the United States Constitution, as distinguished from rights which had their origin elsewhere; in other words, rights which appertain to federal citizenship as such, as distinguished from rights which appertain to state citizenship; and that the rights involved in this case are not within that category.

Moreover, petitioners respectfully show, that even if, upon a determination that certain of the causes of action laid in the bill of complaint, are within the category intended by Section 24 (14), whereas others are not, there must be a reversal of the judgment and decree below, since the several fact situations upon which the respective causes of action are based, are separate and distinct and the existence

of jurisdiction with respect to one such cause does not warrant the retention of jurisdiction by the district court as to the others. *Hurn* v. *Oursler*, 289 U. S. 238, 246; *Geneva Furniture Co.* v. *S. Karpen & Bros.*, 238 U. S. 254.

II. *Reasons Relied on for the Allowance of the Writ.*

1. The majority of the Circuit Court of Appeals for the Third Circuit has decided that the ordinance here in question conflicts with the 14th Amendment to the Constitution of the United States, and in this respect its decision is in direct conflict with the decision of the United States Supreme Court in the case of *Davis* v. *Massachusetts*, 167 U. S. 43. That case arose upon an appeal from the holding of the Supreme Judicial Court of Massachusetts in *Commonwealth* v. *Davis*, 162 Mass. 510, to the effect that an ordinance of the City of Boston which required a permit issuable at the discretion of the Mayor, as a prerequisite of the right to speak on Boston Common, was valid and that it was a proper exercise of the power delegated to the municipality by the legislature. On appeal to this Court the ordinance was expressly sustained against the charge that it violated the 14th Amendment, and it was held that the decision of the court of last resort of Massachusetts, to the effect "that no particular right was possessed by the plaintiff in error to the use of the common"; was "conclusive of the controversy", entirely aside from the fact that, "the power conferred upon the chief executive officers of the City of Boston by the ordinance in question may be fairly claimed to be a mere administrative function vested

in the Mayor in order to effectuate the purpose for which the common was maintained and by which its use was regulated." This decision has not been expressly overruled or modified, nor, so far as petitioners can perceive, impliedly, by any subsequent decision of this Court. There is thus presented a situation in which the Circuit Court of Appeals has decided a question of federal constitutional law in a way directly in conflict with an applicable prior decision of this Court.

2. The decision of the majority of the Circuit Court of Appeals for the Third Circuit is in direct conflict with the decisions of the New Jersey Court of Errors and Appeals and the New Jersey Supreme Court in *Harwood* v. *Trembley*, 97 N. J. L. 173 and *Thomas* v. *Casey*, 121 N. J. L. 185. In the latter of these cases, the same ordinance was before the court as is involved in this case. In both cases it was held to be the law of New Jersey that the highways may not be used for the holding of public meetings without permission of the public officials in charge of such highways. In the latter case this rule was held to apply to public places "such as highways and parks." These cases further held that the constitutional guarantee of liberty of speech does not authorize a citizen to use the public property of a community "for the purpose of exercising that guarantee."

There is thus presented a very important question of constitutional law which two courts exercising jurisdiction in the same area have decided differently, the decision of the Circuit Court of Appeals being furthermore, as indicated above, at variance with the decision of this Court in *Davis* v. *Massachusetts*, 167 U. S. 43.

3. Both the District Court and the majority of the Circuit Court of Appeals held that, even if the ordinance were valid, nevertheless it had been administered in an unconstitutional manner. On a set of facts showing that a danger of disorder which might result from the granting of a permit in that case was far less likely than in the case at bar, the New Jersey Supreme Court, in *Thomas* v. *Casey, supra* (121 N. J. L. 185), refused to compel the Director of Public Safety to issue the requested permit. The Court said (p. 192):

> "The director of public safety knows the temper of the people he serves. The record indicates that many citizens have strongly protested against the use of the public highways for a demonstration by the Socialist party. Veteran organizations have filed petitions of protest. That the police could quell any disorder is no reason to grant a permit which might lead to disorder and a possible injury to innocent persons. The public are entitled to their tranquillity, and the discretion to issue the permit in question is vested in the chosen representatives of the city.
>
> * * *
>
> "Where, as here, the issuance of a permit rests in the sound discretion of a municipal officer, his action will not be lightly disturbed. There is nothing in the record that indicates that the director's refusal was arbitrary or capricious. He made a thorough investigation and believes that disturbances would result if the permit was granted."

It is thus manifest that on this phase of the case, as well as that relating to the validity of the ordinance, the majority of the Circuit Court of Appeals

and the Supreme Court of New Jersey are in direct conflict. This conflict between Courts exercising jurisdiction within the same area should be authoritatively settled by this Court.

4. The District Court found that it was vested with jurisdiction in the premises, under Section 24 (1) of Judicial Code (U. S. C. Title 28, Section 41 (1)) and that the jurisdictional minimum amount in controversy of $3,000 was involved in this case, notwithstanding that the allegation of the bill to that effect was challenged by petitioners, and although no evidence as to damage or value was introduced. This decision was affirmed by the majority of the Circuit Court of Appeals. Both decisions are in conflict with the decisions of this Court in *Smith* v. *Adams,* 130 U. S. 167; *Wheless* v. *St. Louis,* 180 U. S. 379; *Kurtz* v. *Moffitt,* 115 U. S. 487, construing that provision of the Judicial Code. In attempting to distinguish these applicable decisions furthermore, the Circuit Court of Appeals has misconstrued the scope and effect of other decisions of this Court, to wit, *Wiley* v. *Sinkler,* 179 U. S. 58; *Nixon* v. *Herndon,* 273 U. S. 536; *Barry* v. *Edmunds,* 116 U. S. 550.

5. The Circuit Court of Appeals also found that the District Court had jurisdiction by virtue of Section 24 (14) of the Judicial Code (U. S. C. Title 28, Sec. 41 (14)). This holding, it is submitted, is in conflict with *Holt* v. *Indiana Mfg. Co.,* 176 U. S. 68, and the lower court decisions in *Marcus Brown Holding Co.* v. *Pollak,* 272 Fed. 137 (D. C. S. D. N. Y.), and *Gobitis* v. *Minersville School,* 21 Fed. Supp. 581 (D. C. E. D. Pa.). The question as to the exact line of demarcation between cases which fall

within Section 24 (1) and Section 24 (14) is an important one. Manifestly, they cannot be construed to cover the same ground. Exactly what constitutional rights are covered by Section 24 (14) should be authoritatively settled by this Court.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the said court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and of all proceedings in this cause to the end that the same may be reviewed and determined by this Court according to law; and that your petitioners may have such other or further relief or remedy in the premises as this Court may deem appropriate and in conformity with law, and that the said judgment and decree of the said Circuit Court of Appeals in the said case and every part thereof may be reversed by this Honorable Court.

Dated, February 7, 1939.

JAMES A. HAMILL,
JOHN A. MATTHEWS,
CHARLES HERSHENSTEIN,
EDWARD J. O'MARA,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

The opinion of the District Court for the District of New Jersey is reported in 25 Fed. Supp. 127 and will be found at page 72, Vol. I of the Record; the opinion of the Circuit Court of Appeals for the Third Circuit has not yet been reported but will be found on page 109, Vol. IV of the Record.

Jurisdiction.

This Court's jurisdiction is invoked under Act of Congress, February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. Sec. 347a, Judicial Code Sec. 240a).

Statement of the Case and Questions Involved.

The petition for writ of certiorari contains a statement of the questions involved in this case, as well as of all the facts material to their consideration.

Specifications of Errors.

The Circuit Court of Appeals erred:—

1. In holding that the Jersey City street meeting ordinance adopted April 15, 1930 is unconstitutional on its face as repugnant to the due process clause of the Fourteenth Amendment.

2. In holding that the said ordinance has been administered in an unconstitutional or discriminatory manner.

3. In holding that jurisdiction over all or some of the causes of action laid in the bill of complaint was properly assumed by the District Court under Judicial Code, Section 24 (1).

4. In holding that jurisdiction over all or some of the causes of action laid in the bill of complaint was properly assumed by the District Court under Judicial Code, Section 24 (14).

5. In holding that respondents were not barred of the right of relief in equity for unclean hands.

6. In failing to reverse the decree of injunction in the District Court on the ground that same is vague and impracticable of enforcement by the Court.

Summary of Argument.

A summary of the argument will be found in the captions to the points hereinafter advanced.

Argument.

I.

The decision of the Circuit Court of Appeals in respect to the street meeting ordinance is in conflict with the decision of this Court in *Davis v. Massachusetts*, 167 U. S. 43; an important question of constitutional law is thus presented which should be settled by this Court.

The principal point in controversy between the respective parties is that which relates to the constitutionality under the United States Constitution of the

ordinance adopted by the City of Jersey City, entitled, "An Ordinance to preserve public peace and good order and to prevent riots, disturbances and disorderly assemblage."* This ordinance provides in effect that no public parades or public assemblies in or upon the public streets, highways, public parks or public buildings of the city shall take place or be conducted until a permit shall have been obtained from the Director of Public Safety. The Director of Public Safety is authorized to grant a permit for parades and public assemblages upon application made to him at least three days prior to the proposed parade or assembly, and he is also authorized to refuse to issue said permit, when, after an investigation of the facts and circumstances pertinent to said application, he believes it would be proper to refuse the issuance thereof, provided, however, that the said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

It is to be noted that this ordinance does not concern itself with speech at all. It does not attempt to regulate what may or may not be said. It is designed merely to regulate the manner in which the streets and public places of the city may be used.

This ordinance was enacted in pursuance of two separate and distinct provisions of the so-called Home Rule Act of the State of New Jersey, under one of which (R. S., Sec. 40:48-1)* the legislature has delegated to the governmental body of every municipality power to make, amend, repeal and enforce ordinances to "preserve the public peace and order, to prevent and quell riots, disturbances and disorderly assemblages;" the other (R. S., Sec. 40:67-1)*, "to prescribe

* See appendix.

the time, manner in which, and terms upon which, persons shall exercise any privileges granted to them in the use of any street, highway, alley or public place. * * *" In pursuance of this ordinance the petitioner, Daniel J. Casey, Commissioner of Public Safety of the City of Jersey City, examined said applications for the holding of street meetings in public places, investigated the circumstances surrounding said applications, and, in his discretion, denied the permits sought. It is apparent from this recital that this case in no aspect involves the right to speak, assemble or meet freely or the deprivation of those rights by petitioners. Charges laid in the bill alleging a conspiracy upon the part of petitioners to effect a general deprivation of the right to meet in private places in the city were not found to be substantiated by the trial court and such charges are not an issue upon this application. Petitioners respectfully maintain that the narrow question presented, with respect to the issue of meetings and assemblies on public streets or property, has been definitely determined by the Supreme Court of the United States in *Davis* v. *Commonwealth of Massachusetts,* 167 U. S. 43, and that the decision of the Circuit Court of Appeals for the Third Circuit in the present case, holding that the Jersey City ordinance is unconstitutional on its face, is squarely in conflict therewith.

The *Davis* case, referred to *supra,* was the outcome of the making of a public address by one Davis, on Boston Common, without obtaining a permit for that purpose from the Mayor of the city, as required by the applicable Boston ordinance. On appeal from a conviction for the violation of the ordinance it was contended that it not only constituted a violation of the defendant's general rights under the Fourteenth

Amendment to the United States Constitution, but that, as an ordinance, it was void because arbitrary and unreasonable in that it vested in the mayor the uncontrolled discretion to determine when he would grant a permit. *The Supreme Judicial Court of Massachusetts,* 162 Mass. 510, speaking through Mr. Justice Holmes, overruled exceptions to the judgment of the lower court in which the conviction of Davis took place, holding:

> "* * * That such an ordinance is constitutional * * * does not appear to us open to doubt. To say that it is unconstitutional * * * assumes that the ordinance is directed against free speech generally * * *, whereas in fact it is directed toward the modes in which Boston Common may be used. There is no evidence before us to show that the power of the legislature over the common is less than its power over any other park dedicated to the use of the public, or over public streets, the legal title to which is in a city or town. *Lincoln* v. *Boston,* 148 Mass. 578, 580, 20 N. E. 329. As a representative of the public, it may and does exercise control over the use which the public may make of such places, and it may and does delegate more or less of such control to the city or town immediately concerned. *For the Legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house.*" (Italics supplied.)

On the appeal to this Court (*Davis* v. *Commonwealth of Massachusetts, supra*) Mr. Justice White, after citing with approval the above-quoted language of Mr. Justice Holmes, said:

> "It is therefore conclusively determined there

was no right in the plaintiff in error to use the Common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe. The 14th Amendment to the Constitution of the United States does not destroy the power of the states to enact police regulations as to the subjects within their control (*Barbier* v. *Connolly*, 113 U. S. 27, 31 (28:925); *Minneapolis & St. L. R. Co.* v. *Beckwith*, 129 U. S. 26, 29 (32:585, 586); *Giozza* v. *Tiernan*, 148 U. S. 657 (37:599); *Jones* v. *Brim*, 165 U. S. 180 (41:677), and does not have the effect of creating a particular and personal right in the citizen to use public property in defiance of the Constitution and laws of the State."

The court said further:

"The assertion that although it be conceded that the power existed in the state or municipality to absolutely control the use of the Common, the particular ordinance in question is nevertheless void because arbitrary and unreasonable in that it vests in the mayor the power to determine when he will grant a permit, in truth, whilst admitting on the one hand the power to control, on the other denies its existence. The right to absolutely exclude all right to use necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser."

Petitioners will not burden this brief with an exposition of the majority decisions throughout the country which are in accord, with respect to the constitutionality of ordinances akin to that under examination.

Before analyzing the decrees of the District and Circuit Courts in this case, in the light of the deter-

mination of this Court in the *Davis* case, it will be noted that the latter authority stands for two distinct propositions; (a) individuals have no general constitutional right to speak or assemble in public places, contrary to prohibitory regulations of municipalities, acting under proper delegation of authority; (b) arbitrary application of such ordinances cannot be complained of by individuals, since the greater power, of absolute and proprietary control, contains the lesser, of arbitrary or discriminatory application.

So far as is material to this petition, however, *i. e.*, to a showing of conflict between the Circuit Court of Appeals and an applicable prior ruling of this Court, only (a), the first proposition above noted, is important, since the *holding* of the Circuit Court, as distinguished from its general remarks concerning discriminatory application of the ordinance by petitioners, was that there does exist a general constitutional right to speak or assemble in public streets, municipal ordinances or state statutes to the contrary notwithstanding. This becomes apparent upon close examination of the extension of the operation of the decree of the District Court, as entered by the Circuit Court of Appeals. The injunction entered in the District Court granted respondents an absolute right with respect to the holding of meetings or assemblies only so far as parks in Jersey City were concerned, whereas, with respect to public streets or highways, the right decreed was granted only until and unless the defendants in their official capacities should adopt and enforce the deliberate policy of forbidding meetings of any kind on the streets of the city. On appeal, the Circuit Court eliminated the conditional or contingent feature of the injunction

as it applied to the adjudicated right of plaintiffs to meet in public streets, under the theory that the ordinance was void on its face.

While admitting that its conclusion as to the unconstitutionality of the Jersey City ordinance was at variance with that of this Court in the *Davis* case, the Circuit Court of Appeals nevertheless departed from the rule of that case, under the supposed authority of the later United States Supreme Court cases, to wit: *Gitlow* v. *New York*, 268 U. S. 652; *Fiske* v. *Kansas*, 274 U. S. 380; *De Jonge* v. *Oregon*, *supra*; *Near* v. *Minnesota*, *supra*; and *Lovell* v. *City of Griffin*, 303 U. S. 444. Petitioners respectfully contend, however, that the cited cases of this Court were concerned solely and exclusively with the protection of the rights of free speech, free press and free assembly, *qua* free speech, free press, and public assembly. They hold that, within the purview of the due process clause of the 14th Amendment, a state may not deny the fundamental constitutional rights in question, upon standards or for reasons based upon anticipated public disorder. The case of *Lovell* v. *City of Griffin*, *supra*, merely upholds the constitutional right to distribute circulars and leaflets, as against the provision of a municipal ordinance which prohibits such distribution absolutely, and without regard to whether such distribution might constitute a littering of the streets or an offense to public order. None of them have the slightest application to the peculiar problem presented in this case, which is the determination of the line which must be drawn between the proprietary right and correlative duty of a municipality, under authority delegated to it by the state, of regulating or prohibiting use of public

streets for purposes other than traffic, and of public parks for purposes other than those of normal recreational activities, on the one hand, and the legitimate exercise by persons of their constitutional rights to freedom of speech, press and assembly on the other. This case presents the opportunity for a definitive drawing of such a line by this Court. A writ of certiorari ought to issue under Rule 38 of the Rules of the Supreme Court, since the Circuit Court of Appeals for the Third Circuit "has decided a federal question in a way probably in conflict with applicable decisions of this Court"; or, at the least, "has decided an important question of federal law which has not been, but should be, settled by this Court;".

II.

The decision of the Circuit Court of Appeals in respect to the street meeting ordinance is also in conflict with the decisions of the courts of New Jersey in *Thomas* v. *Casey*, 121 N. J. L. 185 and *Harwood* v. *Trembley*, 97 N. J. L. 173; an important conflict between Appellate Courts exercising jurisdiction in the same State is thus presented which should be settled by this Court.

A portion of the record in the case at bar related to two applications for street meetings by Norman Thomas, both of which were denied. To test the validity of the denial of the second application, Thomas brought mandamus proceedings in the New Jersey Supreme Court to compel the defendant Casey to grant him a permit, and in said proceedings he attacked the constitutionality of the same ordinance which both the District Court and Circuit Court con-

sidered in the instant case. The Court declared the ordinance constitutional in an opinion handed down on October 18th last, *Thomas* v. *Casey*, 121 N. J. L. 185, and denied the writ of mandamus. In the course of the Court's opinion, Mr. Justice Bodine said (p. 190):

> "The present case in no sense involves the relator's right to speak as he pleases within the confines of the state and federal constitutions. However, he may not speak in public places in Jersey City without the permit of the properly constituted authorities, even though with such permit he would be justified in making the speech intended. The public have a right to the uninterrupted enjoyment of the highways and parks maintained at public expense."

The Court then proceeded to quote with approval the language of Chief Justice Gummere, writing for the New Jersey Court of Errors and Appeals in *Harwood* v. *Trembley*, 97 N. J. L. 173, wherein the Court said:

> "* * * The streets of a city are common highways, primarily designed for the use of the public in passing and repassing and in such temporary occupancy as is incidental to the exercise of those rights. No one is justified in obstructing a public street by collecting therein a large assemblage of people for the purpose of delivering an address to them. The common highways of the state are not designed for the purpose of holding public meetings therein, and anyone who attempts to do this, without having first obtained permission from the public authorities in charge of such highways, commits a public nuisance. The constitutional guaranty of liberty of speech no

more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty than it permits him to occupy *in invitum* the private property of a fellow citizen for the same purpose."

In view of these determinations by the New Jersey courts that respondents have no absolute right to hold public meetings in the streets, highways, parks and other public places of a municipality, it becomes desirable and expedient that this Court should issue its writ of certiorari in order to resolve the conflicting points of view between federal and state courts in the same territorial jurisdiction with respect to an important matter of public law affecting private rights.

III.

Certiorari should issue because the Circuit Court of Appeals has construed Judicial Code, Sections 24 (1) and 24 (14) in conflict with applicable decisions of this Court and with the weight of authority in the inferior federal courts.

As set out in the petition, petitioners attacked the assumption of original jurisdiction by the District Court in this matter and were met by respondents' argument to the effect that jurisdiction could be based upon a number of grounds, but in particular, upon the provisions of Judicial Code, Section 24 (1) and (14) (28 U. S. C. Sec. 41 (1) and 41 (14)). In affirming the judgment and decree of the District Court, the Circuit Court of Appeals concluded that the issue of jurisdiction had to be resolved in

favor of respondents on the ground that either of the sections cited vested jurisdiction in the District Court without mentioning the several other bases for jurisdiction contended for by respondents in their brief. We therefore address our discussion under this point, only to the sections cited.

Section 24 (1) provides for original jurisdiction in the Federal District Court in all suits of a civil nature at common law or in equity where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, if the suit arises under the constitution or laws of the United States.

Section 24 (14) provides that original jurisdiction may be assumed by the Court without regard to the $3,000 jurisdictional requirement, in suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any State law, statute, ordinance, etc., of any right, privilege or immunity *secured* by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Paragraph 6 of the Bill of Complaint contains the jurisdictional allegations applicable to Section 24 (1), aforementioned, and paragraph 7 of the Bill makes the *pro forma* recitals designed to meet the requirements of Section 41 (14). These allegations were brought into issue below by the appellants, first, by direct traverse in the answer, and secondly, by motion to dismiss the bill for lack of jurisdiction, which was denied by the trial court.

The jurisdiction of the Court below having been brought into issue by defendants, it was incumbent upon the trial court to require proof of the juris-

dictional facts, and its failure to do so constitutes error. The federal district courts must assure themselves of federal jurisdiction in every case before them. *Miller* v. *First Service Corp.*, 84 F. (2d) 580 (C. C. A., N. D., 1936).

In *Kvos* v. *Associated Press*, 299 U. S. 269, the Supreme Court expressly held that general averments were insufficient to carry plaintiff's burden of establishing the jurisdictional minimum in the face of proper attack by the defendant.

Petitioners contend that the rights with respect to which plaintiffs sought redress for grievances below were not shown to have a value in excess of $3,000; *i. e.*, under controlling decisions of this Court, the rights claimed do not have a pecuniary value or consequence, calculable in money, and immediately, not remotely or contingently dependent upon the litigation. The trial court and the majority of the Circuit Court of Appeals were therefore in error in finding that Section 24 (1) of the Judicial Code, warranted an assumption of jurisdiction. The rule stated is supported by the following decisions of this Court, *Smith* v. *Adams*, 130 U. S. 167; *Wheless* v. *St. Louis*, 180 U. S. 379; *Kurtz* v. *Moffitt*, 115 U. S. 487; *Healy* v. *Ratta*, 292 U. S. 263; *Youngstown Bank* v. *Hughes*, 106 U. S. 523; *New England Mortgage Security Co.* v. *Gay*, 145 U. S. 123.

Respondents sought to meet the rule contended for by petitioners by arguing that litigation having to do with the redress of grievances affecting civil rights, generally, necessarily concerned rights presumably of a value in excess of the jurisdictional amount, citing such cases as, *Wiley* v. *Sinkler*, 179 U. S. 58 and *Nixon* v. *Herndon*, 273 U. S. 536. The Circuit Court adopted this view. Petitioners maintain that the cited cases

are applicable only to suits involving interference with the right of citizens to vote; that such a right is one which at common law founded a tort action for damages, and that, therefore, the rule concerning the existence of presumptive jurisdictional minimum in such cases is merely an application of the general rule that tort actions for unliquidated damages in the federal courts will be deemed to comply with the requirement of jurisdictional minimum, where the requisite amount is set forth in the *ad damnum* clause of the complaint. The cited cases obviously do not furnish any support to the view that civil or political rights, generally, may form the basis for actions in the federal district courts without establishing, against objection, the actual existence of the requisite jurisdictional amount in controversy. See *State of Ohio* v. *Cox*, 257 Fed. 334. In view of the disregard of applicable decisions of this court, and the misconstruction of others, by the Circuit Court in construing Judicial Code, Section 24 (1), in this case, a proper ground for the issue of the writ of certiorari is indicated.

Even more cogent grounds for the issuance of a writ of certiorari in this case are found in the construction by the Circuit Court of Appeals of the alternative provision relied upon by respondents for the vesting of jurisdiction in the District Court, Section 24 (14) of the Judicial Code. The rights "secured" by the federal constitution, with respect to which, under said section, an action may be instituted in the district courts without a showing of jurisdictional minimum, have been authoritatively construed by this Court, on the basis of prior decisions by the Court, as meaning rights which were created in the first instance by the United States Constitution, *i. e.*, rights

appertaining to national as distinguished from state citizenship, and not such rights as spring from sources other than the federal constitution. This construction of the section was announced by the Supreme Court of the United States in the case of *Holt* v. *Indiana Manufacturing Co.*, 176 U. S. 68, relying upon earlier decisions of this court in the *Slaughter House Cases*, 16 Wall. 36 and *U. S.* v. *Cruikshank*, 92 U. S. 542. The construction contended for finds further support in the recent decision of this Court in *Hamilton* v. *Regents University of California*, 293 U. S. 245, at page 261, and was expressly followed by the lower court decisions of *Marcus Brown Holding Co.* v. *Pollak*, 272 Fed. 137 and *Gobitis* v. *Minersville School District*, 21 Fed. Supp. 581. The only indication to the contrary is in the case of *Smith* v. *U. S.*, 157 Fed. 721. In that case, however, the consideration of the question was only by way of dictum, the jurisdictional right involved being that of a negro citizen of the United States to enjoy freedom from involuntary servitude, which was a right secured in the first instance by the 13th Amendment to the United States Constitution and therefore a proper basis for jurisdiction under Section 24 (14), under the construction of the section previously adopted by this Court in the *Holt* case, *supra*. The *Smith* case is the sole authority relied upon by the Circuit Court of Appeals below in support of its conclusion that the word "secured" in Section 24 (14) has reference to any rights protected or guaranteed by the federal constitution, regardless of their genesis. The opinion of the Circuit Court below does not even attempt to explain or distinguish the applicable ruling of this Court to the contrary in *Holt* v. *Indiana Manufacturing Co.*, *supra*.

Since the rights involved in these proceedings, free-

dom from physical molestation and from exclusion from the state while engaged in labor organizational activities, and the claimed rights of freedom of speech, of press, and of public assembly, are all rights which had their origin in the several states prior to the adoption of the federal constitution, and are merely additionally guaranteed against state invasion or deprivation under the 14th Amendment, they furnish no basis for the assumption of original jurisdiction by the district court in this case under Section 24 (14) of the Judicial Code, *supra*.

Even if it should be determined that the causes of action laid in the bill of complaint respecting arbitrary and unlawful exclusions of certain of the plaintiffs from Jersey City, or kindred causes of action, constitute deprivations of rights "secured", under the authentic construction of the word as used in Section 24 (14), by the federal constitution or by laws of the United States dealing with equal rights of citizens of the United States, nevertheless petitioners respectfully contend that so far as the separate and distinct cause of action based upon the denial of permits for street meetings and assemblies is concerned, the foundation thereof being claimed to rest on the constitutional rights of free speech and assembly, those rights are indubitably attributes of state citizenship, not springing in the first instance from the federal constitution, but having their genesis in state citizenship prior to the adoption of the federal constitution. Therefore, the assumption of jurisdiction by the District Court under Section 24 (14) of the Judicial Code with respect to that cause of action, was unquestionably erroneous, and justifies a reversal of the judgment and decree below, so that those portions of the decree which pertain to street meetings and assemblies may be elimi-

nated therefrom. Such procedure is indicated by the decision of this Court in the case of *Geneva Furniture Mfg. Co.* v. *S. Karpen & Bros.*, 238 U. S. 254. That the causes of action are separable, so that the existence of federal jurisdiction as to one, does not warrant an assumption of jurisdiction as to others not founded upon any applicable provision of the Judicial Code, authentically construed, is determined by the rule of this Court laid down in the case of *Hurn* v. *Oursler*, 289 U. S. 238.

In view of the foregoing, the construction arrived at by the Circuit Court of Appeals as to the meaning of the word "secured" in Section 24 (14) of the Judicial Code, is basic to its decision, and because of the obvious conflict between the rule adopted by the Circuit Court of Appeals, and that laid down by this Court in the *Holt* case, *supra*, and in other decisions of the inferior federal courts in accord, the issuance of the writ of certiorari to review such judgment and decree of the Third Circuit Court becomes peculiarly appropriate.

IV.

Certiorari should issue in this case because public policy requires a prompt determination by this Court of the respective rights and duties of municipalities in regulating and controlling the use of public streets and places, on the one hand, and the relation thereof to the fundamental rights of free speech, assembly and press, on the other.

Respondents have contended as a ground for the issuance of a writ of certiorari by this Court in an earlier phase of the present proceedings that no case in which the writ has heretofore been granted prior

to the judgment of the intermediate appellate court involved issues of greater public importance than those involved in this case. While not ready to go to the extent of such a position, and certainly not on the grounds contended for on the former application by respondents, petitioners nevertheless concur in the view that the issues involved herein are of great public importance. As indicated hereinabove, petitioners do not conceive that this case, properly considered, involves the existence of the constitutional rights of free speech, assembly and free press or the scope of protection to which they are entitled. Petitioners are in complete accord with the views expressed by the courts below, and by respondents on the earlier application for writ of certiorari to this Court, that the fundamental civil liberties in question must be afforded the fullest degree of protection and enjoyment. This case, however, does not involve them. The issues have been beclouded by respondents in the form of such general assertions as that the right of persons freely to assemble and speak in Jersey City has been denied by the municipal authorities. Such characterizations are patently untrue. No case is made on the record of a suppression of meetings or of freedom of speech or assembly on *private* property, whether in buildings or in open places. If there were, petitioners readily concede that their position would be indefensible. The sole issue in this case which divides the parties, is the extent to which *public* streets and places shall be made a forum for large gatherings of persons upon particular occasions.

The solution of that issue is one which, within its limited scope, merits a definitive solution by this

Court, and petitioners therefore respectfully urge it as a cogent ground for the issue of certiorari in this case.

Respectfully submitted,

JAMES A. HAMILL,
JOHN A. MATTHEWS,
CHARLES HERSHENSTEIN,
EDWARD J. O'MARA,
Counsel for Petitioners.

Appendix.

"AN ORDINANCE TO preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage.

The Board of Commissioners of Jersey City DO ORDAIN:

1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place, or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County Jail for a period not exceeding ninety days or both.

5. This ordinance shall take effect upon its final passage.

Introduced April 1st, 1930.
Adopted April 15th, 1930.

JOHN BEGGANS,
MICHAEL I. FAGEN,
ARTHUR POTTERTON,
WILLIAM B. QUINN,
FRANK HAGUE,
Commissioners.

Dated, City Clerk's Office,
Jersey City, April 21st, 1930.

EDWARD J. HOLLAND,
City Clerk."

Appendix.

REVISED STATUTES OF NEW JERSEY.

"40:48-1. *Ordinances: general purpose.* The governing body of every municipality may make, amend, repeal and enforce ordinances to:

* * * * * * *

Maintain order. 6. Prevent vice, drunkenness and immorality; to preserve the public peace and order; to prevent and quell riots, disturbances and disorderly assemblages;"

"40:67-1. *Ordinances relating to.* The governing body of every municipality may make, amend, repeal and enforce ordinances to:

* * * * * * *

Use of streets; digging. c. Prescribe the time, manner in which and terms upon which persons shall exercise any privilege granted to them in the use of any street, highway, alley or public place, * * *"

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 651.

FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH, Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, UNITED RUBBER WORKERS OF AMERICA, WILLIAM J. CARNEY, WILLIAM J. TRAYNOR, WILLIAM P. McGINN, SAMUEL MACRI, JAMES P. SWEENEY, DANIEL J. FOLEY and AMERICAN CIVIL LIBERTIES UNION,

Respondents.

BRIEF ON BEHALF OF PETITIONERS.

CHARLES HERSHENSTEIN,
EDWARD J. O'MARA,
JAMES A. HAMILL,
JOHN A. MATTHEWS,
MILTON B. CONFORD,
Counsel for Petitioners.

... Press, 790 Broad St., Newark, N. J. - MA. 3-0893

INDEX.

	PAGE
Opinions of the Courts Below	1
Jurisdiction and Allowance of Writ of Certiorari	2
Statement of the Case	2
(a) Parties, Nature of the Proceedings and Abstract of Decree	2
(b) Abstract of Pleadings	4
(c) Statement of Facts	9
(d) Statement of Issues Herein	22
Specifications of Errors Urged	25
Summary of Argument	26
Argument	27
POINT I—Under the law of New Jersey no one has the right to hold a public meeting in the streets or public places of a municipality without the consent of the local authorities. It having been held by this Court in *Davis* v. *Commonwealth*, 167 U. S. 43, that such a law does not conflict with the federal constitution, the Jersey City ordinance which restricts the right to speak in such places under certain conditions, is necessarily valid. The ordinance has been legally enforced in this case	27
(a) The Statute and Case Law of New Jersey	28
(b) *Davis* v. *Commonwealth*, 167 U. S. 43, Upholds the Constitutional Right of a Municipality to Regulate the Use of Public Places by Requiring Permits for the Holding of Meetings Therein	33

PAGE

(c) *Near* v. *Minnesota* and Kindred Cases Are Not Applicable to the Issues Involved Here and Do Not Overrule or Modify *Davis* v. *Massachusetts*, *supra*. Moreover, *Lovell* v. *Griffin* is Clear Authority to the Effect That the Objective of Prevention of Disorder, at Which the Jersey City Ordinance is Directed, May be Constitutionally Applied as a Test for Regulation of the Use of the Streets 38

(d) The Doctrine of Unconstitutional Conditions is Not Properly Applicable to the Situation Involved Herein 42

(e) The Weight of Authority is in Accord With the Decision of this Court in *Davis* v. *Commonwealth*, *supra*, to the Effect That the Proper Regulation and Restriction by Municipal Authorities of the Use of Streets and Public Places, Within the Police Power, is not in Conflict with the Constitutional Guarantees of Free Speech and Peaceable Assembly 44

(f) So Far as the Decree Below Relates to Public Meetings in Parks, it Cannot be Justified on Any Basis of Discrimination by Petitioners, Since There is no Proof Thereof in the Record, Nor by Any Consideration Based Upon the True Nature of Park Purposes 50

(g) The Decree Below is Further Objectionable in Disregarding the Rights of the Residential Public of Jersey City to Peace and Quiet 56

(h) The Director of Public Safety Did Not Abuse the Discretion Vested in Him by the Ordinance in Question When He Denied Respondents' Applications for Permits for Street Meetings 57

PAGE

POINT II—The injunction entered below is defective because vague, uncertain and impracticable of enforcement by the Court or of compliance by petitioners 62

(a) The Injunction is Impracticable of Enforcement by the Court 62

(b) The Decree is Impracticable of Compliance by Petitioners 64

(c) The Vagueness of the Decree Has the Effect of Preventing Petitioners, at Their Peril of Criminal Liability, From Drafting a New Ordinance. 68

POINT III—The District Court was not invested with jurisdiction of the subject matter of the bill of complaint 69

(a) The question of jurisdiction was in issue, having been raised by motion to dismiss the bill and by appropriate denials of the jurisdictional allegations in the answer, and it was incumbent upon the trial court to insist upon proof of the jurisdictional facts before assuming jurisdiction over the cause generally..... 69

(b) The matters in controversy were not shown to have a value in excess of $3,000; the rights claimed did not have a "pecuniary" value or consequence, i. e., "calculable" in money and "immediately", not remotely or contingently, dependent on the litigation..... 75

(c) The rights involved in this case are in no instance "secured" by the United States Constitution, and therefore that instrument does not bring them within the 14th subdivision of Judicial Code, Section 24, which dispenses with the necessity for jurisdictional amount..... 85

PAGE

(1) Meaning of "right, privilege or immunity secured", within Section 24 (14) 85

(2) Genesis and Nature of Rights Involved in this Case 95

(d) The rights involved in this case are in no instance secured by any law of the United States providing for equal rights of citizens of the United States or of all persons within the jurisdiction of the United States, and therefore no such law brings them within the alternative provisions of the Fourteenth subdivision of Judicial Code, Section 24 101

(e) There is no jurisdiction in this case founded upon Judicial Code, Section 24 (12) 105

(f) The equal protection clause of the Fourteenth Amendment constitutes no basis for jurisdiction under subdivision 14 106

(g) Article IV, Section 2, of the United States Constitution does not create a basis for jurisdiction under subdivision 14 110

(h) The alleged deprivation of the "privilege", under the Fourteenth Amendment, of passing freely from state to state does not base jurisdiction under subdivision 14 112

(i) Attempt to base jurisdiction on the Interstate Commerce Clause of the Federal Constitution, within subdivision 14 114

(j) So far as those respondents which are artificial entities are concerned, they have no constitutional rights, either under the "liberty" concept of the due process clause, or under the "privileges and immunities" clause of the Fourteenth Amendment, and there was therefore no jurisdiction below to enter decrees in their favor on

PAGE

account of the particular charges made by them, under any section of the judicial code..... 115

(k) No case is made for jurisdiction under Judicial Code, Section 41 (14) as to the individual respondents herein, since they never made any application for permits to speak or meet under the 1930 ordinance and therefore cannot be said to have suffered a deprivation thereunder..... 117

(l) Judicial Code, Section 24(14) deals with deprivation of certain rights under color of a statute, law, ordinance, etc. of any "State". Certain of the grievances urged by respondents were not imputable to the State of New Jersey, and do not therefore found a proper basis for the decree, to the extent that it deals with those grievances. For the same reasons, no jurisdiction can be predicated under Judicial Code, Section 24(1), dealing with controversies arising under the Constitution and laws of the United States, respondents having no substantive right to relief, to the extent that their grievances are based upon deprivations under the Fourteenth Amendment, since that Amendment is likewise limited to State action..... 118

(m) The decree must be reversed if there was a failure of jurisdiction as to any of the separate causes of action set forth in the Bill, for any of the reasons hereinabove specified..... 122

(n) Petitioners have not waived lack of jurisdiction over subject matter..... 126

Conclusion 128

Appendix A..... 129

Appendix B..... 131

Appendix C..... 132

Appendix D..... 134

Table of Cases Cited:

PAGE

Allen v. *Ramsey*, 47 Pac. (2d) 658, 665 (Okl. Sup. Ct. 1935) 84
Allen & Reed, Inc. v. *Presbrey*, 50 R. I. 53, 56, 59..... 37

Ballantine v. *Webb*, 84 Mich. 38..... 67
Barker v. *Commonwealth*, 19 Pa. 412..... 48
Barry v. *Mercein*, 5 How. 103, 120.....76, 83
Benson v. *City of Norfolk*, 163 Va. 1037..... 50
Billington v. *Miller*, 75 N. J. L. 415..... 57
Bloomington v. *Richardson*, 38 Ill. App. 60..... 48
Bradley v. *Public Utilities Commission*, 289 U. S. 92, 95 37
Burlington v. *Pennsylvania Railroad*, 56 N. J. Eq. 259 .....30, 31

Central Parkway, In re, City of Schenectady, 140 Misc. Rep. 727 55
Chicago Park District v. *Lattipee*, 364 Ill. 182..... 32
City of Duquesne v. *Fincke*, 269 Pa. 112..... 47
City of Louisville v. *Lougher*, 209 Ky. 299..... 67
City of Stevens Point v. *Bocksenbaum*, 225 Wis. 373.. 32
City of Tacoma v. *Roe*, 190 Wash. 444..... 49
Colgate v. *Harvey*, 296 U. S. 404..... 95
Collins v. *Wayne Iron Works*, 227 Pa. 326..... 66
Commonwealth v. *Abrahams*, 156 Mass. 57, 60..... 52
Commonwealth v. *Davis*, 162 Mass. 510.....28, 34, 51, 52
Commonwealth v. *Egan*, 113 Pa. Super. 375..... 48
Commonwealth v. *McCafferty*, 145 Mass. 384..... 32
Corfield v. *Coryell*, 4 Wash. (Circuit Court, U. S.) 371, 380 111
Coughlin v. *Chicago Park District*, 364 Ill. 90.....50, 51
Coughlin, et al. v. *Sullivan*, 160 N. J. L. 42..... 23n
Crandall v. *Nevada*, 6 Wall. 36..... 112

Davis v. *Commonwealth*, 167 U. S. 43;
26, 27, 28, 33, 34, 35, 36, 37, 38, 39, 41, 42, 44, 47, 50
De Jonge v. *Oregon*, 299 U. S. 353.....38, 41, 95, 96, 97

PAGE

Denny v. *City of Muncie*, 197 Ind. 28..... 32
Dieppe Corp. v. *City of New York*, 246 App. Div. 279.. 55
Doremus v. *Hennessy*, 62 Ill. App. 391, affd. 176 Ill. 608 85

Earl v. *Brewer*, 248 App. Div. 314.....67, 68
Elliott v. *Empire Natural Gas Co.*, 4 F. (2d) 493, 500 (C. C. A. 8th, 1925)..... 78
Erie Railroad v. *Tompkins*, 304 U. S. 64..... 27
Evening Times Printing & Publishing Co. v. *American Newspaper Guild*, 124 N. J. Eq. 71, 75 66
Ex Parte Heffron, 179 Mo. App. 639..... 67
Ex Parte Jackson, 96 U. S. 727..... 40

Fifth Avenue Coach Co. v. *City of New York*, 194 N. Y. 19 32
Fiske v. *Kansas*, 274 U. S. 380..... 42
Fitts v. *Atlanta*, 121 Ga. 567..... 48
Fort Worth Acid Works v. *City of Fort Worth*, 248 S. W. 822 (Tex. Civ. App. 1922)..... 67
Frost v. *Railroad Commission*, 271 U. S. 583..... 43

Gaines v. *Thompson*, 74 U. S. 347..... 58
Garneau v. *Eggers*, 113 N. J. L. 245..... 32
Garneau v. *Eggers*, 113 N. J. L. 245..... 58
Geneva Furniture Mfg. Co. v. *S. Karpen & Bros.*, 238 U. S. 254 .....117, 123
Gitlow v. *New York*, 268 U. S. 652..... 42
Glasgow v. *City of St. Louis*, 87 Mo. 678..... 32
Gobitis v. *Minersville School District*, 21 F. Supp. 581 (D. C. Pa. 1937).....92, 94, 112
Greenough v. *Independence Lead Mines Co.*, 45 F. (2d) 659, 660 (D. C. 1930)..... 77
Grosjean v. *American Press Co.*, 297 U. S. 233..... 39
Grubb v. *Public Utilities Commission*, 281 U. S. 470, 475 127

Hamilton v. *University of California*, 293 U. S. 245..92, 112
Harwood v. *Trambley*, 97 N. J. L. 173.....27, 31
Healy v. *Ratta*, 292 U. S. 263..... 77

PAGE

Holt v. *Indiana Manufacturing Co.*, 176 U. S. 68 90, 91, 94, 97, 102, 108, 110
Home Telephone & Telegraph Co. v. *Los Angeles*, 227 U. S. 278 119
Howland v. *Corn*, 232 F. 35 85
Hurn v. *Oursler*, 289 U. S. 238, 246 125
Hutchins v. *Hutchins*, 7 Hill (N. Y.) 104, 107 84
Hynes v. *Briggs*, 41 F. 468 83

International News Service v. *Associated Press*, 248 U. S. 215 ..... 82, 116

Jones v. *Baker*, 7 Cow. (N. Y.) 445 85
Jones v. *Oklahoma City*, 78 F. (2d), 860 (C. C. A. 10th, 1935) 118

Klein v. *Construction Co.*, 260 U. S. 226 69
Kleitz v. *Byrne*, 143 F. 1008 (C. C. Wash., 1906) 70
Kurtz v. *Moffitt*, 115 U. S. 487 ..... 76, 83
Kros v. *Associated Press*, 299 U. S. 269 .... 71, 82, 116, 126

L. H. Henry & Sons v. *Rhinesmith*, 219 Ia. 1088, 1093 ... 68
Livermore v. *Herschell*, 3 Pick. (Mass.) 33 85
Logan v. *United States*, 144 U. S. 263 108
Lone Star Salt Co. v. *Blount*, 49 Tex. Civ. App. 138 .. 68
Long v. *Jersey City*, 37 N. J. L. 348 31
Louisiana v. *McAdoo*, 234 U. S. 627, 633 58
Love v. *Phelan*, 128 Mich. 545 48
Lovell v. *City of Griffin*, 303 U. S. 444, 20, 21, 23, 23n, 38, 39, 40, 120

Magel v. *Gruetli Benevolent Society*, 203 Mo. App. 335. 67
Mansfield, C. & L. M. R. R. Co. v. *Swan*, 111 U. S. 379. 69
Marcus Brown Holding Co. v. *Pollak*, 272 F. 137 (D. C. 1920), 140 ..... 81, 91, 94, 110, 112
Massachusetts v. *Mellon*, 262 U. S. 447 117
Matthews v. *Rodgers*, 284 U. S. 521 127
May v. *Wood*, 172 Mass. 11 85
McNutt v. *General Motors Corp.*, 298 U. S. 178 71
Mettler v. *Ottumwa*, 197 Ia. 187 32

PAGE

Michigan Commission v. *Duke*, 266 U. S. 570..... 43
Miller v. *First Service Corp.*, 84 F. (2d) 680 (C. C. A., N. D. 1936) 71
Mitchell v. *Maurer*, 293 U. S. 237, 247..... 127

National Labor Relations Board v. *Bell Gas & Oil Co.*, 98 F. (2d) 405, 406 (C. C. A. 5, 1938)..... 66
Near v. *Minnesota*, 283 U. S. 697.....38, 39, 42, 44
Ness v. *Fisher*, 223 U. S. 683,..... 58
New England Mortgage Security Co. v. *Gay*, 145 U. S. 123 78
Nixon v. *Herndon*, 273 U. S. 536..... 80

Ohio Custom Garment Co. v. *Lind*, 13 F. Supp. 533.. 117
Oregon R. & Nav. Co. v. *Shell, et al.*, 125 F. 979, 981 (C. C. Wash., 1903) 74, 77
Orient Insurance Co. v. *Daggs*, 172 U. S. 557.....113, 115

Palko v. *Connecticut*, 302 U. S. 319, 325..... 41
Patterson v. *Colorado*, 205 U. S. 454, 464..... 96
Paul v. *Virginia*, 75 U. S. 168.....112, 113, 115
People ex rel. Doyle v. *Atwell*, 232 N. Y. 96..... 44
People v. *Smith*, 263 N. Y. 255..... 46
Poultry Producers v. *Barlow*, 189 Cal. 278..... 64
Procter & Gamble Co. v. *Coe*, 96 Fed. (2d) 518, 520..... 58

Robert E. Hicks Corp. v. *National Salesmen's Training Association*, 19 Fed. (2d) 963, 965 (C. C. A. 7th, 1927) 67

Selover, Bates & Co. v. *Walsh*, 226 U. S. 112.....112, 115
Senn v. *Tile Layers Protective Union*, 301 U. S. 468..... 96
Simpson v. *Geary*, 204 F. 507 (D. C. Ariz. 1913).....90, 99
Slaughter House Cases, 16 Wall. 36 86, 87, 92, 93, 95, 111, 113
Sleeper v. *Baker*, 22 N. D. 386, 5 R. C. L. 1090..... 84
Smith v. *Adams*, 130 U. S. 167, 175.....75, 80
Smith v. *Cohoon*, 283 U. S. 553, 562..... 36
Smith v. *Rines*, 22 F. Cas. 13, 100..... 85
Smith v. *United States*, 157 F. 721, 724, 725..... 93
Sproles v. *Binford*, 286 U. S. 374..... 32
State ex rel. Liberman v. *Van De Carr*, 199 U. S. 552.. 47

PAGE

State of Ohio v. *Cox*, 257 F. 334 (D. C. 1919) 80
State v. *Leavitt*, 105 Me. 76, 83 ..... 108, 109
State v. *Sugarman*, 126 Minn. 477, 479 49
Sullivan v. *Shaw*, 6 Fed. Supp. 112 (D. C. Cal.) 59

Texas, etc. R. R. Co. v. *Marshall*, 136 U. S. 393 64
Thomas v. *Casey*, 121 N. J. L. 185 ..... 9, 27, 32
Truax v. *Raich*, 239 U. S. 33 ..... 81, 103, 109

Unger, In re, 1 Okl. Cr. 222 32
United Mine Workers of America v. *Chafin*, 286 F. 959 (D. C., W. Va., 1923) 119
United Mine Workers of America v. *Coronado Mining Co.*, 259 U. S. 344 116
United States v. *Cruikshank*, 92 U. S. 542, 87, 89, 90, 93, 94, 95, 97, 98, 99, 103, 107, 108, 110
United States v. *Harris*, 106 U. S. 629, 645 98
United States v. *Langes*, 48 F. 78 (Writ of error dismissed 144 U. S. 310) 89
United States v. *Moore*, 129 Fed. 630 100
United States v. *Wheeler*, 254 U. S. 281, aff'g 254 F. 611 ..... 89, 94, 98, 112, 113, 114

Virginia v. *Rives*, 100 U. S. 313 120

Waters-Pierce Oil Co. v. *Texas*, 177 U. S. 28, 45 113
West v. *Monmouth Beach*, 107 N. J. L. 445 ..... 29, 35
Western Turf Association v. *Greenberg*, 204 U. S. 359 .. 115
Wheless v. *St. Louis*, 180 U. S. 379, 382 75
Wilbur v. *City of Newton*, 16 N. E. (2d) 86 (Sup. Ct. Mass. 1938) 32
Wiley v. *Sinkle*, 179 U. S. 58 80
Williams v. *Gallatin*, 229 N. Y. 248 53
Williams v. *Hylan*, 223 App. Div. 48, affd. 248, N. Y. 616 55
Wilson v. *Eureka City*, 173 U. S. 32 47
Work v. *Rives*, 267 U. S. 175, 183 58

Yeandle v. *Pennsylvania R. R. Co.*, 169 F. 938 (C. C. A. 3rd, 1909) 69, 70
Youngstown Bank v. *Hughes*, 106 U. S. 523 78

OTHER AUTHORITIES CITED:

PAGE

Act of Congress, February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C., Sec. 347a), Judicial Code, Sec. 240a 2
Act of 1875 (28 U. S. C., Section 80) 71
Articles of Confederation, Fourth Article 111, 113
Civil Rights Laws 101, 102, 103
Constitution of the United States of America:
Article I, Section 8 114
Article IV, Sec. 2 .....89, 98, 110, 111, 112
1st Amendment 96
13th Amendment 93, 101
14th Amendment,
24, 25, 41, 42, 43, 47, 59, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 100, 101, 102, 106, 108, 112, 115, 116, 118, 119, 120, 121
Section 1 106
15th Amendment 101
18th Amendment 80
Dillon, Municipal Corporation, 5th ed.; Sec. 1163..... 32
Enforcement Act of 1870..... 100
Enforcement Act of April 20, 1871..... 102
Interstate Commerce Act 114, 115
Interstate Commerce Clause, Article I, Section 8, Federal Constitution 114
Judicial Code, Act of Congress, Mar. 3, 1911, c. 231, 36 Stat. 1091:
Section 24 (1) .26, 70, 74, 79, 82, 83, 95, 103, 104, 118, 122
Section 24 (12).....80, 105, 106
Section 24 (14) .(Tit. 28 U. S. C., Section 41 (14)), 5, 26, 70, 80, 81, 85, 89, 90, 91, 93, 94, 97, 98, 99, 100, 101, 102, 103, 104, 106, 108, 110, 112, 114, 115, 116, 118, 119, 121, 122, 123
Section 41 (14)..... 117
Section 240 (a)..... 2
National Labor Relations Act.....7, 104

PAGE

New Jersey Revised Statutes of 1937:
Sec. 2:63-1 ..... 60, 134
" 2:63-10 ..... 60, 134
" 40:48-1 ..... 28, 29, 131
" 40:61-1 ..... 29, 132
" 40:67-1 ..... 29, 131
R. S.:
Sec. 1977 102
" 1978 102
" 1979 102
" 1980 ..... 102, 105
" 1981 102
" 1982 102
" 1983 102
" 1984 102
" 1985 102
" 1986 102
" 1987 102
" 1988 102
" 1989 102
" 1990 102
" 2004 102
" 5517 102
Report on the Virginia Resolutions 96
Wagner Act 104
U. S. Code, Title 8:
Section 31 102
" 41-56 102
" 43 ..... 102, 103
" 47 105
4 Blackstone's Commentaries, 151, 152 96
4 Madison's Works, page 543 96
5 Ruling Case Law 1090 84
12 American Jurisprudence 132 109
16 Stat. at L. 141 (Enforcement Act of May 31, 1870) 88, 100
17 Stat. at L. 13, ch. 22 102
18 Stat. 336, 337 102

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 651.

FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH, Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, UNITED RUBBER WORKERS OF AMERICA, WILLIAM J. CARNEY, WILLIAM J. TRAYNOR, WILLIAM P. McGINN, SAMUEL MACRI, JAMES P. SWEENEY, DANIEL J. FOLEY and AMERICAN CIVIL LIBERTIES UNION,

Respondents.

BRIEF ON BEHALF OF PETITIONERS.

OPINIONS OF THE COURTS BELOW.

The opinion of the District Court for the District of New Jersey is reported in 25 Fed. Supp. 127 and will be found at page 72, Vol. 1 of the Record; the opinion of the Circuit Court of Appeals for the Third Circuit has not yet been reported but will be found in Vol. IV, p. 101 of the Record.

JURISDICTION AND ALLOWANCE OF WRIT OF CERTIORARI.

This Court's jurisdiction is invoked under Act of Congress, February 13, 1925, c. 229, Section 1, 43 Stat. 938, (28 U. S. C. Sec. 347a) Judicial Code Sec. 240a.

The petition for issuance of the writ of certiorari was filed on February 6, 1939 and was granted by the Court on the same day.

STATEMENT OF THE CASE.

(a) Parties, Nature of the Proceedings and Abstract of Decree.

The petitioners, who were the defendants below, are Frank Hague, individually and as Mayor of Jersey City, Daniel Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City.

The respondents, who were the plaintiffs below, are Committee for Industrial Organization, (referred to as the C.I.O.), Steel Workers Organizing Committee of the Committee of Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union.

This is an equity proceeding in which a decree was made by the United States District Court for the District of New Jersey by which the petitioners were enjoined from (R., Vol. I, p. 155)—

(A) 1. Excluding or removing respondents or those acting in sympathy with them from the city of Jersey City;

2. Exercising any personal restraint over the respondents or persons acting in sympathy with them, except in so far as such personal restraint is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law;

3. Interfering with said respondents or their agents in their right to free access or locomotion on the public streets of Jersey City, except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law;

(B) 1. Interfering with said respondents or their agents in their right to communicate their thoughts to other persons on the public streets of Jersey City;

2. Interfering with said respondents in the circulation or distribution on the public streets of Jersey City of circulars, leaflets or hand bills;

3. Interfering with said respondents in the carrying or displaying of placards, signs or other printed matter.

4. (a) Interfering with their holding of meetings in the open air and in parks except when in reasonable conflict with the public recreational purposes of said parks;

(b) Withholding protection for said meetings;

(c) Continuing their expressed refusal to grant permits to certain named individuals;

(d) Refusing permits for public meetings on the public streets of Jersey City unless and until all street meetings are forbidden; subject to petitioners' reasonable interpretation of the easement of traffic.

5. Aiding or abetting in any manner whatsoever any person to commit or attempt to commit any of the things enjoined by said decree or not to do anything required to be done.

On appeal to the Circuit Court of Appeals for the Third Circuit, that Court modified the decree by eliminating from paragraph B4(d), hereinabove digested, the condition which made the operation of the injunction in respect to street meetings dependent upon the continued failure of petitioners to forbid meetings of any kind on behalf of any persons on the public streets and places of Jersey City. The judgment of affirmance of the decree, as modified, was by a divided court (R., Vol. IV, pp. 101, 141).

(b) Abstract of Pleadings.

The respondents, who are four labor unions, all unincorporated associations, the American Civil Liberties Union, which describes itself as a membership corporation, and six individuals, members of, and field representatives for the C.I.O., filed their bill of complaint in the United States District Court for the District of New Jersey, alleging that on various occasions several of their constitutional rights had

been infringed upon and interfered with by the petitioners. The causes of action set forth in the complaint and the charges made therein are numerous and do not apply with equal force to all the parties plaintiff.

The complaint contains the usual formal allegation to the effect that the suit is of a civil nature in equity arising under the Constitution and Laws of the United States and that the amount in controversy exceeds $3,000, exclusive of interest and costs. It is further alleged as a ground of jurisdiction, in the language of Judicial Code, Sec. 24 (14) (Tit. 28 U. S. C., Section 41 (14)) that the suit is "to redress the deprivation, under color of state law, statute and ordinance, of rights, privileges and immunities secured by the Constitution of the United States and of rights secured by laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States".

The complaint charges that the petitioners, acting under the instruction and domination of petitioner, Frank Hague, denied to all of the respondents the right to hold meetings in Jersey City, pursuant to an ordinance adopted January 21, 1920. This ordinance relates to indoor meetings in halls and was not dealt with by the Trial Judge in his opinion or decree and therefore is immaterial to the issues involved here.

Respondents further charge a plan and conspiracy on the part of the petitioners which resulted in a policy adopted by them and directed at all of the respondents, whereby hall-owners in Jersey City have been intimidated, with the result that halls to be used as meeting places are made unavailable to the re-

spondents. The Trial Court found that the evidence in the case did not sustain this charge and made no decree thereon.

Further charge is made that the petitioners, in furtherance of an alleged plan and conspiracy, have refused to permit picketing in cases of labor disputes. This charge refers to the respondent C.I.O. and the other labor unions associated with it. The Court did not pass upon this charge and therefore it is not material to the present issue.

Next, respondents, C.I.O. and its affiliates, allege that the petitioners, acting under an ordinance forbidding the distribution of circulars, leaflets or other printed matter upon the streets of Jersey City, interfered with persons engaged in that work, confiscated their pamphlets and transported certain individual respondents, and others, outside of the city limits. Some of the distributors were arrested for violating the ordinance or for violation of the state law against unlawful assembly.

Further complaint is made that, acting under an ordinance which was adopted by the City of Jersey City on April 15, 1930, which ordinance prohibits meetings in streets and public places without a permit from the Director of Public Safety, who is empowered to refuse a permit when, after investigation of all the facts and circumstances pertinent to the same, he concludes that to grant a permit would result in riot, disturbances and disorderly assemblage, the petitioners refused to grant such permits to the respondents, C.I.O. and American Civil Liberties Union. It is further alleged that this ordinance is unconstitutional, and that petitioners discriminated against respondents in the application of the ordinance. This is the allegation which the Trial Court and the Circuit Court of Appeals dealt with at length

in their respective opinions, and forms the basis for the most important provision in the decree.

Respondents further accuse the petitioners of violating the due process and the equal protection clauses of the United States Constitution, the National Labor Relations Act and the Civil Rights Act of the United States and seek an injunction restraining the petitioners from doing any of the acts complained of.

Petitioners' answer denies the allegations of the complaint which charge them either with violation of law, a conspiracy, or activities in connection therewith, and all other material charges of the bill referring to alleged conduct of the petitioners upon which injunctive relief was sought to be predicated. Denial is also made that the ordinances referred to in the complaint are unconstitutional. The petitioners further specifically deny the allegations of the bill to the effect that the suit was one arising under the Constitution and laws of the United States and that the amount in controversy exceeded $3,000, exclusive of interest and costs, and also deny the allegation that the suit was one to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States, and of rights secured by laws of the United States providing for equal rights of citizens and of all persons within the jurisdiction of the United States.

By separate defenses the answer alleges that the respondents have an adequate, complete and speedy remedy at law, that the action of the respondents in invading the city (on November 29, 1937) involved violations of existing law and was for the purpose of intimidating the city authorities and to create disorder, confusion and riot, and that respondents by

virtue of their own unlawful acts have precluded themselves from the right to relief, if any existed. The answer further asserts that the grounds set forth in the complaint, which purport to give the United States District Court jurisdiction, are frivolous in that the amount in controversy as to each respondent and each petitioner does not exceed $3,000, exclusive of interest and costs, and that no facts are alleged which show or make it appear that any real or substantial federal question is involved. Petitioners further allege that the only question of law involved is the alleged unconstitutionality of the several ordinances referred to in the complaint.

By an amendment to the answer the petitioners say that respondents are not entitled to equitable relief because they came into court with unclean hands, in that, instead of resorting to the orderly process of law, they took the law into their own hands, disregarding the ordinances of the city, violating the same, causing disorder in the community and creating a situation fraught with grave danger, unrest and damage to its citizens and their property. By a further amendment, the petitioners state that their refusal to issue permits for meetings on the public streets was a proper exercise of their power, that all the facts and circumstances in connection with the applications for permits were investigated and that the permits were denied because, as evidenced by numerous protests of citizens of the City, the holding of public meetings on the streets by the applicants would have resulted in riots, disturbances and disorderly assemblage. Petitioners further stated that the constitutionality of the ordinance with regard to holding meetings on the public streets and parks in Jersey City was at that time being reviewed by the New Jersey Supreme Court in the case of

Thomas v. *Casey*, 121 N. J. L. 185 and that said Court had complete jurisdiction to determine the questions involved, so that, as to that subject-matter, the respondents had a complete and adequate remedy in the New Jersey courts.

At the conclusion of the trial, petitioners moved before the Trial Court, *inter alia*, to dismiss the bill of complaint for lack of jurisdiction in the Court over the subject-matter of the suit. This motion was denied.

(c) Statement of Facts.

The petitioner Frank Hague is the Mayor of Jersey City. He has held that position for the past twenty-one years, and for four years prior thereto was the Director of Public Safety (R., Vol. II, p. 1030). During these twenty-five years, Jersey City has been peculiarly free from crime, disorder and unrest (R., Vol. III, p. 1322). The city has a reputation of being a moral and clean city (R., Vol. II, p. 1135) with little or no labor difficulty (R., Vol. III, p. 1159). Nor was the question of free speech ever raised in Jersey City prior to the controversy which led up to these proceedings (R., Vol. II, pp. 1115, 1124). The trouble started at the time of the seamen's strike when Harry Bridges, a noted Communist, ordered five hundred "strong-arm" men to come to Jersey City for the purpose of organizing a strike of the maritime workers (R., Vol. II, p. 1039). The respondent American Civil Liberties Union participated in these activities by sending their representatives, one of whom was Arthur Garfield Hayes, to picket the shipping industries in the city (R., Vol. II, p. 1068).

At about this time, Bridges, who had previously

been identified with the American Federation of Labor, started an independent union of his own which became affiliated with the C.I.O. (R., Vol. III, p. 1158). This strike is important because it marks the beginning of the efforts of fomenters of disorder to disrupt the peaceful relationship existing between employers and employees in Jersey City, and it further marks the initial effort on the part of the American Civil Liberties Union to aid these persons in the accomplishment of their designs.

After the settlement of the seamen's strike in the early part of 1937, conditions in Jersey City were not disturbed for some months. During the balance of that year, however, there appeared in the newspapers of the country many news items concerning sit-down strikes in various parts of the country carried on under the auspices of the C.I.O., many of which were attended by riots and violence. At the same time numerous articles were published by the newspapers concerning the domination of the activities of the C.I.O. by communists (Exhs. D-17—D-26 inclusive. R., Vol. IV).

On November 23, 1937, the Newark Evening News published an item which caused grave concern to the Jersey City authorities (Exh. D-15, R., Vol. IV). The article in question carried the following headline in bold type—

> "C.I.O. Prepared for Invasion—Mass Drive by Three Thousand to Be Launched Monday in Jersey City."

Similar articles appeared in other newspapers. These publications were occasioned by a statement made by William Carney, Regional Director of the C.I.O. in New Jersey, one of the respondents herein, in which

he outlined his plan for initiating a C.I.O. drive on the industries of the city. The articles stated that aside from field representatives and organizers of international unions, more than 2800 volunteers would distribute leaflets in one of the important industrial areas of the city; of that number more than 2000 would come from the International Maritime Union; and that the Civil Liberties Union, International Labor Defense, Workers Defense League and the Hudson County Committee for Civil Rights would also participate (Exh. D-15, R., Vol. IV).

The municipal authorities were greatly concerned with these announcements because they interpreted them as a concerted attempt by the respondents to disrupt the peaceful relationship which had continuously existed between industry and labor, and as a threat to create in Jersey City, riots and violence similar to those which had been experienced in Detroit and other cities where the C.I.O. had been active. Necessary precautionary measures were taken to prevent disorder (R., Vol. II, p. 1099).

The threat contained in the statement attributed to Carney was not an idle one. At five-thirty in the morning of November 29, 1937, the day mentioned as the date for the invasion, several hundred persons representing the C.I.O. and the other organizations mentioned in the newspaper article, congregated at the C.I.O. headquarters in Jersey City, 76 Montgomery Street, for the purpose of carrying out the plans announced by Carney. They left the C.I.O. headquarters, many of them carrying circulars and leaflets, for the purpose of distributing them to the workers as they entered the factories (R., Vol. I, p. 173). At that time there was in force in Jersey City an ordinance (Schedule B—Complaint, R., Vol. I, p. 22),

which prohibited the distribution of circulars upon the streets of the City. The police, exercising their best judgment as to how to deal with this situation, which was fraught with danger (R., Vol. I, p. 551), arrested some of the participants, and took possession of their circulars. Others were escorted from the scene of their activities in order to obviate any danger of injury either to them or to the residents of the city (R., Vol. II, p. 757).

Realizing that the authorities of Jersey City were determined to prevent the grave disorders which had been a part of the C.I.O. strikes throughout the country during 1937, the respondents adopted a new method of attack. An ordinance of Jersey City entitled "An Ordinance to Preserve Public Peace and Good Order and to Prevent Riots, Disturbances and Disorderly Assemblage", adopted April 15, 1930 (Schedule E—Complaint, R., Vol. I, p. 26),[1] requires a permit for the holding of any meetings on the streets or public places of the city. The ordinance provides that application for a permit must be presented at least three days prior to the proposed outdoor meeting. The Director of Public Safety is given the authority to grant the permits. He is also authorized to refuse to issue a permit when, after an investigation of the facts and circumstances pertinent to said application, he believes it would be proper to refuse the issuance thereof, provided, however, that the said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

The record discloses that for the past twenty-five years during which time Mayor Hague has been connected with the government of Jersey City, thousands of permits for open air meetings have been granted

[1] See Appendix A.

(Exh. P-10 for Id., R., Vol. IV). All religious groups and associations were given permits during those years and proponents of every known political party and belief (including communists) were allowed to speak upon the public streets without the slightest hindrance, even to the extent of permitting one of the most violent political antagonists of the Mayor, to speak under the very window of the Mayor's home (R., Vol. II, p. 1077). During all these years only two applications were denied—one dated August 1, 1932, and the other,—August 26, 1933 (Exh. P-10 for Id., R., Vol. IV).

Within a short time after the abortive attempt to invade the city, an application for a permit to hold an open air meeting was made on behalf of the respondent, American Civil Liberties Union (Schedule F—Complaint, R., Vol. I, p. 27). The proposed speakers at this meeting were Morris L. Ernst, Congressmen Jerry O'Connell, Maury Maverick, and Allen. At approximately the same time, an application for another outdoor meeting was made by the respondent C.I.O. at which the speakers were to be Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al. Barkin, Sam Macri and John Kiesler (Schedule F—Complaint, R., Vol. I, p. 27). These applications, and the few others to which reference will be made later, were denied because of the following facts and circumstances.

At about this time the newspapers quoted from a speech by Morris L. Ernst which he made in addressing the Lawyers' Guild in Washington, as follows:

> "You can write all the statutes you please, but if a Mayor like Hague can tear them up, you must go on a new tack. So far there has been no evidence of machine guns and I hope there will

be none because I know we would be playing into the hands of Mayor Hague."

This speech was given wide publicity in the newspapers, and the headline in a Jersey City paper (Exh. D-1, R., Vol. IV), contained these words in very bold type:

"C.I.O. Leader Talks of Machine Guns."

The newspapers also published the fact that Congressman O'Connell toured Spain as the guest of the Communist party (R., Vol. II, p. 796).

By this time the citizens of Jersey City were thoroughly aroused at the prospect of radicals and communists being permitted to use the public streets of Jersey City as a forum. The temper of the people was made known by the adoption of resolutions by such organizations as the Jersey City Chamber of Commerce, representing the business and industrial interests of the entire city (R., Vol. II, p. 821); Association of the Sons of Poland, representing sixteen thousand members (R., Vol. II, pp. 818-820); Catholic War Veterans (Exh. P-19 for Id., R., Vol. IV); Jersey City Lions Club (Exh. P-19 for Id., R., Vol. IV); Jersey City Real Estate Board (Exh. P-19 for Id., R., Vol. IV); Ladies of the Grand Army of the Republic (Exh. P-19 for Id., R., Vol. IV); and the Italian War Veterans (Exh. P-22 for Id., R., Vol. IV). Meetings of veterans were held for the voicing of similar protests. On January 6, 1938, a great mass meeting was held in the Jersey City Armory under the auspices of the Chamber of Commerce. It was attended by upwards of forty thousand people (R., Vol. II, p. 816). It unanimously endorsed the position which the governing body had

taken with respect to the preservation of order in the city, and protested against the granting of permits for outdoor meetings to the respondents (R., Vol. II, p. 821). These meetings, the resolutions and protests clearly indicated the attitude of the people of Jersey City, and were facts and circumstances of which the Director of Public Safety was bound to take notice and consider in passing on applications for street meetings (R., Vol. II, pp. 814-817).

Soon after the denial of the applications of the American Civil Liberties Union and the C.I.O., the bill of complaint was filed in this case. Although the bill was filed on January 7, 1938, the Court permitted testimony with regard to the denial of several other permits, applications for which were made in April and May, 1938. In April, 1938, one William Tallman, on behalf of the Socialist Party and Norman Thomas, made application for an open air meeting to be held on April 30, 1938, the day on which May Day was celebrated. The application was denied upon the ground that to grant the permit would result in serious riot, disturbances and disorderly assemblage. In reaching his conclusion, the Director of Public Safety considered, among other things, numerous protests from veterans and others, calling upon him to deny the application (Exh. P-20 for Id., R., Vol. IV). As a matter of fact, this application was withdrawn (R., Vol. II, p. 795). On the afternoon of April 30, 1938, an incident of importance occurred. Norman Thomas was photographed at the May Day celebration in Madison Square Park, New York City, in the act of singing what the newspapers described as the Internationale, and giving what the newspapers referred to as the Communist salute (Exh. D-16, R., Vol. IV). Thomas came to Jersey City on April

30, 1938, in spite of the fact that the application had been withdrawn after its denial by the defendant Casey, and defied the authorities by attempting to make a speech at Journal Square without a permit. Upon this occasion, a large crowd congregated at what is the busiest public square in the city (R., Vol. I, pp. 406, 444). He was not permitted to speak and was escorted to a place of safety. Representatives of the respondents seized upon this occasion as another opportunity to distribute leaflets and circulars. Because of the attendant disorder, the circulars in the possession of two of the distributors were taken from them by the police.

Thomas made another application on May 17, 1938, for a permit to hold an open air meeting. Further protests were received by the petitioners. The veterans caused the photograph of Thomas, singing the Internationale and giving the clenched fist salute of the Communist party to be broadcast throughout the city (R., Vol. III, p. 1359 and Exh. P-29 for Id., R., Vol. IV), clearly indicating the resentment of the members of these organizations. Again the Director of Public Safety made his investigation of all the facts and circumstances pertinent to the application, and based thereon, denied it. The denial of this permit was tested by Mr. Thomas in a direct proceeding brought by him in the New Jersey Supreme Court, seeking a peremptory writ of mandamus to compel the Director to issue a permit to him. In that proceeding he urged that the ordinance was unconstitutional and that the Director was guilty of an abuse of discretion (Exhs. D-28, D-29, R., Vol. IV). The New Jersey Supreme Court squarely decided the question and held that the ordinance was constitutional; that it was a valid exercise of the police power

vested in the municipality, and that there was no abuse of discretion on the part of the Director in denying the application. The opinion is reported in 121 N. J. L. 185.

Three or four other applications were denied at or about this time, all upon similar grounds. Among them were two applications made on behalf of Congressman Jerry O'Connell—one for a meeting to be held at Journal Square on May 7, 1938, and the other for a meeting to be held at Pershing Field on May 27, 1938. On both occasions a tremendous and menacing crowd of people appeared at the places announced for the meetings (R., Vol. I, p. 466). On May 7th, O'Connell failed to appear. On this occasion representatives of the respondents attempted to distribute circulars, but because of the confusion and disorder (R., Vol. I, p. 467) engendered thereby, the police prevented three or four persons from doing so. On May 27th, O'Connell appeared at Pershing Field in accordance with his announced intention to hold a meeting without a permit. He was not permitted to speak and was removed to a place of safety, a police station, under a police escort.

The testimony further discloses that on January 17, 1931, a report was presented to Congress by a special committee appointed to investigate communistic activities in the United States, referred to in the record as the Fish Report. This report specifically deals with the American Civil Liberties Union, the Garland Fund, and the International Labor Defense. It contains excerpts from the testimony of Roger Baldwin, the directing head of the American Civil Liberties Union, as well as from the testimony of William Z. Foster, the then head of the Communist Party (Exh. D-27, R., Vol. IV). It characterizes the American

Civil Liberties Union as a subversive communistic organization and states that fully 90 per cent of its efforts are on behalf of communists who have come into conflict with the law; that its main function is to attempt to protect communists in their advocacy of force and violence to overthrow the government, replacing the American flag by the red flag, and erecting a Soviet government in place of the republican form of government guaranteed to each state by the Federal Constitution. The Garland Fund (the financial report of which was offered as Exh. D-10, R., Vol. IV) is described in this report as having helped to keep alive, by financial assistance, the American Civil Liberties Union, the International Labor Defense, the Daily Worker, and many other communistic and ultra-radical organizations and publications. The International Labor Defense, which organization sent its representatives to participate in Carney's invasion of Jersey City of November 29, 1937, is described in the report as a communistic organization to defend classwar prisoners; that it provides legal aid to all communists arrested for revolutionary activities, and helps to secure bail for them.

The quoted testimony of Roger Baldwin in this report upholds the right of a citizen or alien to advocate murder, assassination, force or violence in the overthrow of government. Foster's testimony conclusively proves that the Communist Party advocates the demolition and destruction of religion, the confiscation of all private property, the overthrow of our government by revolutionary methods, and the fact that its members look to Soviet Russia as their country, and the Soviet red flag as their flag.

Morris Ernst, who was scheduled as a speaker in the application of the American Civil Liberties Union, is

a director of that Union and treasurer of the Garland Fund (Exh. D-10, R., Vol. IV). Norman Thomas and Roger Baldwin are also directors of the American Civil Liberties Union and the Garland Fund (Exh. D-10, R., Vol. IV). The Garland Fund was the owner of a publication known as the New Masses. This appears from the affidavit of ownership which was published in New Masses (R., Vol. III, pp. 1437-1438; Exh. D-11, R., Vol. IV). The New Masses is a publication concerning which the Trial Court made this comment:

> "The Court: I think we are willing to concede that the New Masses advocates doctrines which, as you say, will shock a Christian gentleman. I don't think there is any doubt about that." (R., Vol. III, p. 1435.)

So much for the denial of applications for street meetings. In addition, the respondents sought to substantiate their charge that the police interfered with the carrying of placards. To do so, they produced only one witness, David Silverstein, whose testimony relates to one isolated case, long before the filing of the present bill, and that interference was the subject of a suit in equity to enjoin the police (R., Vol. I, p. 261). There is no other proof in this case relating to interference with the carrying of placards.

Respondents have also endeavored to produce proof concerning the charge that automobiles were stopped and the occupants subjected to illegal search and seizure. In this entire record only two instances of stopping cars have been described. One was the automobile of Jules Nydes in the early morning of November 29, 1937 (R., Vol. I, pp. 344-345), the day of the invasion, upon which occasion circulars were taken by the police (R., Vol. I, p. 347). The other was the

stopping of the automobile of Samuel Macri, who was riding with one Thomas Cometa, on October 28, 1937, upon one of the streets in lower Jersey City (R., Vol. I, p. 501). The car bore foreign license plates and excited the suspicion of the policeman on that thoroughfare. After satisfactory explanation the occupants were permitted to proceed (R., Vol. I, p. 511).

Finally, respondents attempted to prove that the petitioners enforced the city ordinance prohibiting the distribution of circulars on the streets after the decision of the Supreme Court of the United States in *Lovell* v. *City of Griffin*, 303 U. S. 444. This decision was announced on March 28, 1938. The witness, Grace Milgrim, testified on behalf of the respondents that she attempted to distribute circulars on March 29th and 31st, 1938, and was prevented from so doing, but that on April 1st when she again attempted to distribute circulars, she was unmolested (R., Vol. I, p. 419). Manifestly, the city authorities required a reasonable time to secure and examine a copy of this Court's opinion, and to promulgate appropriate police instructions with reference thereto. The fact that three days after the filing of the opinion, the city authorities did not interfere with the distribution of circulars on the streets is a complete answer to the charge that the decision of the Supreme Court was disregarded.

Respondents also called as witnesses the petitioners, Frank Hague, Mayor of Jersey City, and Daniel Casey, Director of Public Safety. They admitted the confiscation of circulars and leaflets and the removal of some persons from the scene of their activities on the few occasions testified to, but they clearly described the unusual circumstances which

made such action necessary. They also testified as to the denial of the permits for outdoor meetings involved in this case and carefully explained the reasons for refusing to grant the same. They, however, were chiefly interrogated with reference to their policies, opinions and "philosophy" under hypothetical situations which never had any basis in fact.

An examination of the testimony of all the witnesses whom the respondents produced at the trial of the issues in this case, discloses: (1) twelve witnesses testified to the occurrences on November 29, 1937, in the early hours of the morning, which was the date of the invasion; (2) five witnesses testified concerning the happenings on April 30, 1938, the occasion when Norman Thomas came to Jersey City to speak at Journal Square, a permit for which was denied to him; (3) four witnesses testified concerning the occurrences on May 7, 1938, at which time a tremendous gathering was present to await Congressman O'Connell, who announced he was coming to Jersey City to make a speech, although a permit had been denied to him; (4) one witness testified to the incident on May 27, 1938, the meeting at which Congressman O'Connell appeared at Pershing Field for the purpose of making an open air speech without a permit; (5) one witness testified to her attempt to distribute circulars on the streets of Jersey City on March 29 and March 31, within three days after the *Griffin* decision, but admitted that on April 1, 1938, she was permitted to distribute them without any molestation; (6) three witnesses testified to the stopping of an automobile on two occasions—one on the early morning of November 29, 1937, the day of the invasion, and the other on October 28, 1937, when a car with a foreign license plate was stopped

by a policeman whose suspicions were aroused, but permitted to proceed; (7) one witness testified to the destruction of placards upon one occasion.

It will thus be noted that on most, if not all of the occasions with reference to which the petitioners have been accused of violating the rights of the respondents, the stage was set and the situations created by the respondents themselves, none of whom was a resident of Jersey City.

It is upon this testimony, and this testimony alone, that the drastic decree of the District Court and the affirmance thereof by the Circuit Court of Appeals, as modified, was based.

(d) Statement of Issues Herein.

Under the decree entered by the District Court, the ordinance entitled "An Ordinance to Preserve Public Peace and Good Order and to Prevent Riots, Disturbances and Disorderly Assemblages" (Schedule E-Complaint R., Vol. I, p. 26) was held unconstitutional only to the extent of its discriminatory enforcement by petitioners, as to meetings on streets. As to meetings in public parks, the ordinance was held void on its face. The modification of the decree by the Circuit Court of Appeals, extended the scope of the decree by making the right to use both the public streets and parks for meetings and assemblies an absolute one, thereby holding the ordinance unconstitutional on its face. The injunction as entered by the Circuit Court, now requires, both as to public parks and streets, that petitioners allow any persons who apply therefor three days in advance, the right to hold meetings and assemblies, regardless of the judgment of the Director of Public Safety of Jersey City, as to the possibility of ensuing riots, disturbances, and

disorderly assemblages, annoyance to and interference with residents on streets where such meetings might be held, or the interference with the right of the general public to relax in and enjoy the facilities of the parks, undisturbed by such mass meetings and assemblies.

Except to the extent that it will be shown hereinafter that the Courts below were utterly without any jurisdiction over the subject matter of the bill of complaint filed, within the provisions of the Judicial Code, *petitioners do not take issue, on this appeal,* with those provisions of the decree of injunction, as entered, dealing with exclusions or removals of respondents from Jersey City, the exercise of unlawful restraint, or the interference by petitioners with the rights of respondents to free access or locomotion on the public streets of the city, their right to communicate their thoughts to other persons on the streets, or their right to circulate or distribute circulars or other literature. Although a portion of the record below dealt with the enforcement by petitioners of a 1924 ordinance of the city forbidding the distribution of circulars on the streets[2] (R., Vol. I, p. 22), the city has not attempted to prevent such distribution since the holding by this Court in *Lovell v. City of Griffin,* 303 U. S. 444, that such prohibition, when absolute and without relation to the end of preventing disorder or littering of the streets, is

---

[2] This ordinance was held valid by the New Jersey Supreme Court in *Coughlin, et al.* v. *Sullivan,* 100 N. J. L. 42. Petitioners accordingly enforced it until, subsequent to the filing of the bill of complaint herein, this Court decided the *Lovell* case, *infra.* Since that decision, petitioners have not attempted to prevent the distribution of circulars, as stated in the context, in spite of apparent and significant differences between the Jersey City ordinance and that condemned in the *Lovell* case.

in violation of the 14th Amendment. The position of petitioners in this regard was definitely stated during the trial of the case and at the argument before the Circuit Court of Appeals.

Aside from the question of jurisdiction, the only substantial issues between the parties on this appeal, to which the argument of petitioners will be limited herein, concern the effect of the decree in abridging the right and duty of the municipal officials of Jersey City to control its public streets and other public places, and to require persons and organizations seeking to exercise the privilege of conducting mass assemblies and making public addresses in and upon such public streets and places, to obtain a permit therefor from the municipal officer in charge, he being authorized to refuse such permit under circumstances specified in the applicable ordinance. Respondents have in the Courts below beclouded and prejudiced a dispassionate consideration of these latter issues by dwelling at length upon the facts and circumstances upon which the provisions of the decree dealing with exclusions and unlawful restraints are based. Petitioners have strictly limited the issues herein, as recited, in order that the true and only presently subsisting issues between the parties, concerning street and park meetings and assemblies, be considered and determined by this Court on their merits, unaffected by extraneous matters. The analysis of all of the testimony, as hereinabove set forth, is presented simply for the purpose of presenting the entire picture of the controversy to the Court. The question of the constitutionality of municipal regulations concerning the use of streets and public places for mass meetings and assemblies, and its effect, if any, upon the funda-

mental rights of free speech and peaceful assembly, is of vital importance, not only to the parties to these proceedings, but to the governing officials of municipalities throughout the country, and the limitation of the issues as herein expressed by petitioners, is in the interest of their permanent and sound adjudication, undistorted by any obtrusion of questions relating to civil liberties generally, which, as petitioners have shown, are not presently in issue.

Although petitioners are earnestly interested in a conclusive determination by this Court of the meritorious questions involved, they regard it as their duty and obligation to further argue the question relating to the absence of original jurisdiction in the courts below over the subject matter of the several complaints. It is respectfully submitted that an insistence by this Court of orderly adherence to rules and statutes concerning procedure and jurisdiction, on the part of persons seeking to litigate questions of constitutional rights, is as important an end, as the adjudication of the nature and extent of the rights in question.

SPECIFICATIONS OF ERRORS URGED.

The Circuit Court of Appeals erred:—

1. In holding that the Jersey City street meeting ordinance adopted April 15, 1930 is unconstitutional on its face as repugnant to the due process clause of the Fourteenth Amendment.

2. In holding that the said ordinance has been administered in an unconstitutional or discriminatory manner.

3. In failing to reverse the decree of injunction as entered in the District Court on the ground that same is vague and uncertain, and impracticable of enforcement by the Court or of compliance by petitioners.

4. In holding that jurisdiction over all or some of the causes of action laid in the bill of complaint was properly assumed by the District Court under Judicial Code, Section 24 (1), Act of Congress, Mar. 3, 1911, c. 231, Sec. 24, 36 Stat. 1091.

5. In holding that jurisdiction over all or some of the causes of action laid in the bill of complaint was properly assumed by the District Court under Judicial Code, Section 24 (14), Act of Cong. cit. *supra*, 36 Stat. 1092.

Summary of Argument.

POINT I—Under the law of New Jersey no one has the right to hold a public meeting in the streets or public places of a municipality without the consent of the local authorities. It having been held by this Court in *Davis* v. *Commonwealth*, 167 U. S. 43, that such a law does not conflict with the federal constitution, the Jersey City ordinance which restricts the right to speak in such places under certain conditions, is necessarily valid. The ordinance has been legally enforced in this case.

POINT II. The injunction entered below is defective because vague, uncertain and impracticable of enforcement by the Court or of compliance by petitioners.

POINT III. The District Court was not invested with jurisdiction of the subject matter of the bill of complaint.

ARGUMENT.

POINT I.

Under the law of New Jersey no one has the right to hold a public meeting in the streets or public places of a municipality without the consent of the local authorities. It having been held by this Court in *Davis* v. *Commonwealth*, 167 U. S. 43, that such a law does not conflict with the federal constitution, the Jersey City ordinance which restricts the right to speak in such places under certain conditions, is necessarily valid. The ordinance has been legally enforced in this case.

It has been settled by the decision of this Court in *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, that the federal courts are bound to apply the local law of the state as expressed by its statutes and the decisions of its courts unless such law is in conflict with any provision of the federal constitution or its amendments.

It is the law of New Jersey, as expressed by the Court of Errors and Appeals in *Harwood* v. *Trembley*, 97 N. J. L. 173, that no one is justified in delivering an address in the public streets without a permit from the municipal officials charged with the control of such streets and public places. It is also the law of New Jersey as set forth in *Thomas* v. *Casey*, 121 N. J. L. 185, that the street meeting ordinance of the City of Jersey City involved in this case, which gives to the Director of Public Safety the right to deny a permit for a meeting on the streets or public places, if in his opinion the granting of such a permit would lead to riot, disturbances or disorderly assemblages, is a valid and constitutional exercise of the police powers, under

a proper delegation of legislative authority. The petitioners submit, therefore, that these decisions of the New Jersey courts are binding upon this Court, unless it is found that the law as therein settled, violates some provision of the federal constitution. This Court has held, however, in *Davis* v. *Commonwealth,* 167 U. S. 43, that a municipal ordinance requiring the issuance of permits for the purpose of holding meetings in public places, issuable in the discretion of the municipal authorities, without any standard being set up in the ordinance itself as to the manner in which that discretion should be exercised, does not violate any provision of the federal constitution or its amendments. It necessarily follows that the Jersey City ordinance, which limits the discretion of the municipal authorities in passing upon the application for such meetings, cannot be held to be violative of the federal constitution. The law of New Jersey as expressed in the foregoing decisions, therefore, is binding upon this Court in this case.

(a) The Statute and Case Law of New Jersey.

It is well established that the state has the absolute power to control the use of streets and public places for the benefit of the public at large. Where such right has been delegated to a municipality, such municipality has similar power, *Commonwealth* v. *Davis,* 162 Mass. 510, aff'd *Davis* v. *Commonwealth,* 167 U. S. 43.

The degree of control over streets and public places which resides in municipalities in New Jersey, depends upon the extent of the power in that regard delegated by the State Legislature. The pertinent legislation in New Jersey is as follows:

By New Jersey Revised Statutes of 1937, Sec.

40:48-1,[3] the legislature delegated to the governing body of every municipality power to make, amend, repeal and enforce ordinances to "preserve the public peace and order, to prevent and quell riots, disturbances and disorderly assemblages".

Under Section 40:67-1,[4] the further power is delegated to "prescribe the time, manner in which, and terms upon which, persons shall exercise any privileges granted to them in the use of any street, highway or public place * * *"

Section 40:61-1[5] deals with the regulation of public parks and playgrounds by municipalities. It is provided that any municipality may acquire property for park purposes and may construct and maintain pavilions, recreation piers, lakes and ponds, may provide music, and may lease any portion thereof for a period not exceeding five years, if not presently needed, and may rent or lease resort or recreational concessions to the highest bidder under specified regulations. Under *West* v. *Monmouth Beach*, 107 N. J. L. 445; it is held to be the law of New Jersey that a municipality may not subject its park property to any use not strictly in accordance with the statute. The municipality is further given, under Sec. 40:61-1, *supra*, the express right to, "by ordinance make and enforce rules and regulations for the government, use and policing of all such public parks, open spaces, playgrounds, beaches, waterfronts and places for public resort and recreation and to provide penalties for violation thereof * * *".

It is manifest that the preservation of the public peace and order and the prevention and quelling of

[3] See Appendix B.
[4] See Appendix B.
[5] See Appendix C.

riots, disturbances and disorderly assemblages are within the police powers reserved by the states and never delegated to the Federal Government. It is likewise clear that the Legislature had the undoubted right to delegate this power to the several municipalities. Pursuant to this delegation of power, the petitioner, Board of Commissioners of the City of Jersey City, governing body of the City of Jersey City, adopted the ordinance entitled, "An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblages", which is set forth as Schedule E, annexed to the Bill of Complaint (R., Vol. I, p. 26). The ordinance provides in effect that no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of the city shall take place or be conducted until a permit shall have been obtained from the Director of Public Safety. The Director of Public Safety is authorized to grant a permit for parades and public assemblages upon application made to him at least three days prior to the proposed parade or assembly, and he is also authorized to refuse to issue said permit, when, after an investigation of the facts and circumstances pertinent to said application, he believes it would be proper to refuse the issuance thereof, provided, however, that the said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

The general nature of the right and title of municipalities in New Jersey to streets and public places, under the delegation of authority from the legislature contained in the statutes hereinabove referred to, or their predecessors, has been expressed as follows: In *Burlington* v. *Pennsylvania Railroad*, 56 N. J.

Eq. 259, the Court of Chancery of New Jersey said (p. 261):

> "A municipal government, invested with the ordinary power to regulate streets, is a trustee for the public."

The extent to which the decree below shackles petitioners in the performance of duties universally conceded to depend peculiarly upon the exercise of discretion by state and municipal officers, is made clear by a consideration of some of the adjudicated incidents of local police control of streets and parks. The first measure of the extent of such control over streets and highways is the consideration of safety, whether involved in the problem of traffic or in that of disorderly assemblage.

In *Long* v. *Jersey City*, 37 N. J. L. 348, at page 352, the New Jersey Supreme Court said:

> "The mayor and aldermen having, under their charter, ample power, it should be regarded as one of their chief duties, also, to secure to their citizens and others the free use of the public streets, by adopting and enforcing proper regulations to prevent or remove all unnecessary obstructions, and to restrict within the narrowest practicable limits such as may be sometimes necessary."

In *Harwood* v. *Trembley*, 97 N. J. L. 173, Chief Justice Gummere, speaking for the New Jersey Court of Errors and Appeals said, at page 175:

> "* * * The streets of a city are common highways, primarily designed for the use of the public in passing and repassing and in such temporary occupancy as is incidental to the exercise of those

rights. No one is justified in obstructing a public street by collecting therein a large assemblage of people for the purpose of delivering an address to them. The common highways of the state are not designed for the purpose of holding public meetings therein, and anyone who attempts to do this, without having first obtained permission from the public authorities in charge of such highways, commits a public nuisance. The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty than it permits him to occupy *in invitum* the private property of a fellow citizen for the same purpose."

In accord: *Dillon, Municipal Corporation,* 5th ed., Sec. 1163; *Mettler* v. *Ottumwas,* 197 Ia. 187; *Glasgow* v. *City of St. Louis,* 87 Mo. 678; *In re Unger,* 1 Okl., Cr. 222; *cf. Commonwealth* v. *McCafferty,* 145 Mass. 384; *Fifth Avenue Coach Co.* v. *City of New York,* 194 N. Y. 19; *Denny* v. *City of Muncie,* 197 Ind. 28; *City of Stevens Point* v. *Bocksenbaum,* 225 Wis. 373; *Sproles* v. *Binford,* 286 U. S. 374; *Chicago Park District* v. *Lattipee,* 364 Ill. 182; *Garneau* v. *Eggers,* 113 N. J. L. 245; *Wilbur* v. *City of Newton,* 16 N. E. (2d) 86 (Sup. Ct. Mass. 1938).

In *Thomas* v. *Casey,* 121 N. J. L. 185, the Jersey City street meeting ordinance presently in question was construed by the Supreme Court of New Jersey in reference to two applications for permits to speak in the streets made by Norman Thomas, both of which were denied by the municipal officers. To test the validity of the denial of the second application, Thomas brought mandamus proceedings, to compel the Director of Public Safety of Jersey City to grant

him a permit. The Court upheld the Director's refusal to grant him a permit and in the course of its opinion said, p. 190:

> "The present case in no sense involves the relator's right to speak as he pleases within the confines of the state and federal constitutions. However, he may not speak in public places in Jersey City without the permit of the properly constituted authorities, even though with such permit he would be justified in making the speech intended. The public have a right to the uninterrupted enjoyment of the highways and parks maintained at public expense."

It clearly appears from the foregoing, therefore, that the unquestionable status of the local law of New Jersey is to the effect that the control and regulation of streets and public places has been absolutely entrusted to the municipalities of the state by delegation of power from the Legislature; that within the due limitation of such delegation, the City of Jersey City has properly enacted its ordinance requiring, as a prerequisite for the use of streets and public places for meetings and assemblies, that the applicant obtain a permit for such purpose, issuable in the discretion of the Commissioner of Public Safety, where no riot, disorder or disorderly assemblage is likely to ensue from the holding of such meetings.

(b) *Davis* v. *Commonwealth*, 167 U. S. 43, Upholds the Constitutional Right of a Municipality to Regulate the Use of Public Places by Requiring Permits for the Holding of Meetings Thereon.

The leading case in our jurisprudence upon the question of the constitutional right of a municipality to regulate the use of its public places by requiring a

permit for the holding of a meeting therein is *Davis* v. *Commonwealth*, 167 U. S. 43. That case was originally before the Supreme Judicial Court of Massachusetts under the title of *Commonwealth* v. *Davis*, 162 Mass. 510. The Court had before it for review the conviction of one Davis for the violation of an ordinance of the City of Boston, which provided that:

> "No person shall, in or upon any of the public grounds, make any public address * * * except in accordance with a permit from the Mayor."

In passing upon the validity of the ordinance, Mr. Justice Holmes, then a member of the Massachusetts Court, and the liberality of whose views cannot be questioned, said:

> "* * * That such an ordinance is constitutional is implied by the former decision, and does not appear to us open to doubt. To say that it is unconstitutional means that, even if the legislature has purported to authorize it, the attempt was vain. The argument to that effect involves the same kind of fallacy that was dealt with in *McAuliffe* v. *New Bedford*, 155 Mass. 216. It assumes that the ordinance is directed against free speech generally (as in *Village of Des Plaines* v. *Boyer*, 123 Ill. 348, the ordinance held void was directed against public picnics and open-air dances generally), whereas in fact it is directed toward the modes in which Boston Common may be used. There is no evidence before us to show that the power of the legislature over the common is less than its power over any other park dedicated to the use of the public, or over public streets, the legal title to which is in a city or town. *Lincoln* v. *Boston*, 148 Mass. 578, 580. As a representative of the public, it may and does exercise control over

the use which the public may make of such places, and it may and does delegate more or less of such control to the city or town immediately concerned. *For the Legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house.* When no proprietary rights interfere, the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the less step of limiting the public use to certain purposes. See Dill. Mun. Corp., §§393, 407, 651, 656, 666; *Commissioners* v. *Armstrong,* 45 N. Y. 234, 243, 244." (Italics supplied.)

On appeal to the Supreme Court of the United States (*Davis* v. *Commonwealth of Massachusetts, supra*) Mr. Justice White, after citing with approval the above-quoted language of Justice Holmes, said:

"It is therefore conclusively determined there was no right in the plaintiff in error to use the Common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe. The 14th amendment to the Constitution of the United States does not destroy the power of the states to enact police regulations as to the subjects within their control (*Barbier* v. *Connolly,* 133 U. S. 27, 31 (28:925); *Minneapolis & St. L. R. Co.* v. *Beckwith,* 129 U. S. 26, 29 (32:585, 586); *Giozza* v. *Tiernan,* 148 U. S. 657 (37:599); *Jones* v. *Brim,* 165 U. S. 180 (41:677), and does not have the effect of creating a particular and personal right in the citizen to use public property

in defiance of the Constitution and laws of the State.

"The assertion that although it be conceded that the power existed in the state or municipality to absolutely control the use of the Common, the particular ordinance in question is nevertheless void because arbitrary and unreasonable in that it vests in the Mayor the power to determine when he will grant a permit, in truth, whilst admitting on the one hand the power to control, on the other denies its existence. The right to absolutely exclude all right to use necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser * * *."

The respondents, as well as the majority of the Circuit Court of Appeals, attempt to distinguish the *Davis* case from the instant situation, in that Davis never applied for a permit as did respondents. This is a distinction without a legal difference, since it is fundamental that where an ordinance or statute is invalid on its face, and an attempt is made to enforce its penalties in violation of constitutional right, the person arrested may raise the constitutional question without having applied for the permit required by the ordinance or statute in question. *Smith* v. *Cohoon*, 283 U. S. 553, 562. The decision of the *Davis* case is therefore in point with the present situation, so far as the primary question of constitutionality is concerned. There is, furthermore, no indication whatever in the opinion of Mr. Justice White, speaking for the Supreme Court in that case, that the determinations stated in the opinion depended to any extent on the fact that Davis had not applied for a permit. Furthermore, the majority

opinion of the Circuit Court of Appeals in this case concedes that its ruling with respect to the constitutionality of the Jersey City ordinance is in conflict with that of this Court in the *Davis* case (R., Vol. IV, p. 116).

The result of the *Davis* case in upholding the validity of municipal control of streets and public places under the police power reserved to the states is particularly salutary at this date, as a matter of public policy, since the degree of supervision and regulation which may be reasonably vested in municipalities for the purposes of control, must necessarily increase rather than be abridged, in the light of the constantly increasing volume of traffic in urban communities.

In *Bradley* v. *Public Utilities Commission*, 289 U. S. 92, 95, Mr. Justice Brandeis, in discussing state legislation regulating the use of highways by motor carriers of freight, said:

> "Regulation to insure safety is an exercise of the police power. It is primarily a state function whether the locus be private property or the public highways."

In *Allen & Reed, Inc.* v. *Presbrey*, 50 R. I. 53, 56, 59, it was said, in reference to a municipal ordinance regulating the parking of automobiles on city streets:

> "By the general rules of law the public has an easement upon the land lying within the lines of the highway * * *. This right and easement of the public is primarily to a free passage on the public streets and sidewalks; the right to stop when the occasion demands is generally an incident of the right to travel * * *
>
> "* * * The fact is the use of the automobile

has increased so suddenly and enormously that the problem of traffic control has not yet been solved. The time may soon come when it will be necessary to prohibit any but a momentary stop in city streets. The decision of the necessity of such or other regulations in the first instance should be left to the local authorities who are familiar with the local situation. The courts are in no position to formulate traffic regulations for different communities."

What was said by the Rhode Island court is no less applicable to the desirability and necessity for local control of questions of traffic obstruction and public disorder, growing out of mass meetings on the public streets.

Since the rendition of the decision by this Court in the *Davis* case, it has had no occasion again to pass upon the question presented to it for adjudication in that case. The ruling of the Court is therefore the settled law of the land.

(c) *Near* v. *Minnesota* and Kindred Cases Are Not Applicable to the Issues Involved Here and Do Not Overrule or Modify *Davis* v. *Massachusetts, supra.* Moreover, *Lovell* v. *Griffin* is Clear Authority to the Effect That the Objective of Prevention of Disorder, at Which the Jersey City Ordinance is Directed, May Be Constitutionally Applied as a Test for Regulation of the Use of the Streets.

Respondents rely upon a group of cases decided by the United States Supreme Court, which held, in substance, that a state may not interfere with the privileges of free speech and free press, *as such,* by imposing conditions of previous restraint based upon the likelihood of public riot or disorder, or licensing requirements not based upon an acceptable standard of police power. *DeJonge* v. *Oregon,* 299 U. S. 353;

Lovell v. *City of Griffin*, 303 U. S. 444; *Near* v. *Minnesota*, 283 U. S. 697; and *Grosjean* v. *American Press Co.*, 297 U. S. 233. We accept the force and authority of these cases, but at the same time respectfully aver that they have nothing whatsoever to do with the constitutionality of regulation by public authorities of the use by private individuals and groups, of public streets and places for meetings and assemblies. The *Davis* case, cited *supra*, and the other cases which have followed its authority, demonstrate too clearly to require further extended exposition, that the incidental and qualified effect which a proper regulation by municipal authorities of their streets and public places may have upon the otherwise free and unbridled immunity that persons constitutionally enjoy from previous restraint upon their right to express themselves, is *damnum absque injuria*. Respondents have betrayed their recognition, albeit unwilling, of the soundness of this essential doctrine, by the unwarranted looseness and breadth of expression employed by them in attempting to stretch the cases above cited to cover this entirely foreign and unrelated situation. They have said, for example, that the *Lovell* case held that the freedom of the press means the freedom to distribute written matter on the public streets, municipal regulations as to the orderliness of such distribution notwithstanding. There is no such statement or holding, express or implied, in that case. The case merely held that within the doctrine of freedom of the press inhered the freedom to distribute written matter in whatever orderly manner might be necessary or expedient for such purpose. The Court said, describing the ordinance before it:

> "It is not limited to ways which might be regarded as inconsistent with the maintenance

of public order or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets."

The vice of the ordinance consisted in its unqualified interference with distribution, which is an essential component of freedom of the press. *Ex Parte Jackson*, 96 U. S. 727.

It appears from the facts of the case, furthermore, to the extent that they are recited in the opinion, that the distribution there in question was of a religious tract by the sect known as Jehovah's Witnesses. This type of distribution is commonly from house to house, only incidentally involving use of the streets. And even were the distribution shown to have taken place on the street, nothing appeared to indicate that such distribution would involve the degree of expropriation of the entire street area that ordinarily ensues when a mass meeting or assembly is held on a street, with its concomitant obstruction of traffic, littering of streets, and general disorder, if not riot. The clear implication from the quoted excerpt is that municipal regulations having a reasonable relationship in objective to any of the stated contingencies, would be constitutional. And the objectives of maintenance of public order and prevention of disorderly conduct are precisely those of the Jersey City ordinance in question, to wit, "to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblages".

Respondents also strenuously contend that the *Lovell* case establishes a new, so-called right of "free expression" on the public streets. The use of the word, "expression", convicts respondents of overreaching, not only the holding of the *Lovell* case, but also

its rationale. Petitioners do not believe that this Court was there concerned in the least with any so-called right of "free expression" on the public streets. There is not and never has been any general right of "free expression" recognized by any court. The use of such a catch-all, cover-all phrase is attended by the gravest risks of confused ideology, as is the use of any other lump-concept. The very distinction and differentiation made by Mr. Justice Holmes in his decision of the *Davis* case of the situation before him, from that involved in legislation truly abridging free speech or assembly, and also by the Supreme Court in affirming him, was based upon an implicit breakdown of the so-called right of free and uninhibited expression, under any or all circumstances, into the component situations involved, depending upon the particular time, place and circumstance of the particular attempted type of "expression". If that right is sought to be exercised in public streets and places in conflict with the right of the public at large to free and untrammeled use of such places, and in contravention of the discretion of the public officials entrusted with their administration, the right is necessarily dissipated; not because it is any the less intrinsically a fundamental right, but because, under the circumstances, its exercise becomes a perversion of the right and an invasion of the rights of the community generally. The "liberty" referred to in the Fourteenth Amendment, is, in the language of Mr. Justice Cardozo in *Palko* v. *Connecticut*, 302 U. S. 319, 325, "a concept of ordered liberty".

Nor is *DeJonge* v. *Oregon, supra*, in point. That case involved the constitutionality of a prosecution under the Criminal Syndicalism Law of Oregon for assisting in the conduct of a meeting of the Com-

munist party. The reference by the Court to the rights of free speech and peaceable assembly must obviously be understood in connection with their exercise, as in that case, in a private place.

In *Near* v. *Minnesota, supra,* this Court held that the previous restraint of the publication of a newspaper, based upon its proposed criticism of public officials that was malicious, slanderous and defamatory, constituted an infringement of the liberty of the press, protected against state invasion by the Fourteenth Amendment.

None of these cases, nor any of the others that are cited by respondents, bear in the remotest sense on the constitutionality of the requirement by municipalities of the issuance of a permit, in the discretion of an official charged with the maintenance of safety and order on the public streets, as a prerequisite for the right to address an assemblage or hold a meeting on such streets or other public places. *Cf. Gitlow* v. *New York,* 268 U. S. 652; *Fiske* v. *Kansas,* 274 U. S. 380.

The wide divergencies between the constitutional problems involved in the cited cases and that which was presented in the *Davis* case, and in the case *sub judice,* leave the Court the naked question as to whether the *Davis* case is now to be squarely overruled. Petitioners respectfully urge that the considerations of law and policy which controlled the Court forty years ago are no less present today, and that a ruling following that decision is plainly indicated in this case.

(d) The Doctrine of Unconstitutional Conditions is Not Properly Applicable to the Situation Involved Herein.

Respondents contend that if municipalities have the right absolutely to prohibit the use of public

places for assemblies and public meetings, they may not, nevertheless, make the grant of permission for such use contingent upon a subjection of the grantee thereof to an unconstitutional deprivation. *Frost* v. *Railroad Commission,* 271 U. S. 583. Petitioners agree. But that proposition is not here relevant.

In the *Frost* case, the Supreme Court was confronted with a California statute which imposed as a condition of the right of private carriers for hire to use the public highways, that they subject themselves to all the duties and burdens imposed by the statute upon common carriers, including the necessity of procuring a certificate of public convenience. The Court said that, conceding the right of the State to prohibit the use of the highways entirely, it could not constitutionally make its permission for their use dependent upon the conversion, against its will, of a private carrier into a public carrier, such conversion, by mere legislative fiat, having been held an unconstitutional imposition, under the Fourteenth Amendment, in *Michigan Commission* v. *Duke,* 266 U. S. 570. Careful analysis, however, indicates that the proposed analogy is not applicable to the instant situation. The unconstitutional condition imposed in the *Frost* case was, *in and of itself,* and without relation to any other factor, an unconstitutional deprivation of the rights of the corporation in question, *i. e.,* its forcible subjection to the status and burdens of a public carrier. In the present situation, the alleged unconstitutional condition, the requirement of the issuance of a permit for a street meeting, is not, in and of itself, an unconstitutional deprivation of rights. It has merely been held that the issuance of such a permit may not be made the prerequisite for the right to publish or distribute written matter, or,

perhaps, to hold meetings on private property, where the permit for such purposes is directed to be refused if riot and disorder are anticipated by the official to whom the application for the permit is directed. The so-called unconstitutional condition is not such in any absolute sense, but only in relation to the rights of free press and free speech, *as such,* when imposed as a basis for their previous restraint. Since the ordinance in the present case had to do, not with free speech or free press, as such, but *only with the control by the municipality of assemblages in the public streets,* the imposition of a condition based upon anticipated disorder or riot for that purpose was not an imposition of *the* unconstitutional condition condemned in the *Near* and kindred cases.

(e) The Weight of Authority is in Accord With the Decision of this Court in *Davis* v. *Commonwealth, supra,* to the Effect That the Proper Regulation and Restriction by Municipal Authorities of the Use of Streets and Public Places, Within the Police Power, is not in Conflict with the Constitutional Guarantees of Free Speech and Peaceable Assembly.

The holding of this Court in *Davis* v. *Commonwealth, supra,* has been repeatedly followed and applied by state courts of last resort throughout the country.

In *People ex rel. Doyle* v. *Atwell,* 232 N. Y. 96, the New York Court of Appeals passed upon the validity of a substantially similar ordinance. In upholding the validity of the ordinance, the Court of Appeals, through Judge McLaughlin, said (p. 100):

> "* * * The ordinance passed in pursuance of the power thus conferred is valid, since it is a reasonable exercise of the police power over the

public streets. It is not repugnant to the state or federal Constitution, since it does not abridge the right of free speech or assemblage * * *

"* * * *It is too well settled by judicial decisions in both the state and federal courts that a municipality may pass an ordinance making it unlawful to hold public meetings upon the public streets without a permit therefor to require discussion* * * *.

"The contention of the appellants that the ordinance prohibiting public speaking in the public streets abridges liberty of speech, and is, therefore, unconstitutional, is not sustained either by reason or authority. The answer to the contention is that the ordinance merely concerns the use of public streets and is not directed against or concerned with free speech generally. The people have many constitutional rights, the exercise of which on the public streets may be prohibited. *While there is a constitutional right of free speech, there is no constitutional privilege to exercise this right on the public streets in the form of there holding a public meeting.* The fallacy of the appellants' contention was pointed out by Mr. Justice Holmes in *Commonwealth* v. *Davis* (*supra*).

"* * * The right to grant or withhold a permit carried with it the exercise of discretion in the discharge of a public duty. The mayor, in passing upon an application, had to take into consideration the public safety as well as the public convenience. This involved, among other things, the place where the proposed meeting was to be held, the congestion in the street at that point, and the possible disturbance which the meeting might occasion." (Italics supplied.)

In a concurring opinion, the then Judge Cardozo agreed that the ordinance was constitutional. In a

dissenting opinion, Judge Pound also agreed that the ordinance was valid, and said:

> "The right to free speech and right of assembly are not absolute and under the ordinance the mayor had the power, and it was his duty, to withhold permits for street meetings when he thought that such meetings would interfere with travel or create disorder."

In *People* v. *Smith,* 263 N. Y. 255, the same court passed upon the validity of an ordinance of the City of New York which prohibited the preaching or expounding of atheism in parks, streets or other public places of the city, without a permit from the Police Commissioner. In sustaining the ordinance, Chief Judge Pound, writing for the unanimous court, said (p. 256):

> "Defendant, not having applied for a permit, has been convicted of expounding atheism in the street without such a permit. He now challenges the constitutionality of the ordinance as requiring permits for street speaking from exhorters of atheism and religion but not from speakers on other topics. He asserts that it deprives him of the equal protection of the laws and of freedom of speech.
>
> "'It is too well settled by judicial decisions in both the State and Federal courts that a municipality may pass an ordinance making it unlawful to hold public meetings upon the public streets without a permit therefor to require discussion. The right to pass such ordinance is a valid exercise of legislative power, properly delegated to the municipal authorities' (*People ex rel. Doyle* v. *Atwell,* 232 N. Y. 96, 100).
>
> "This ordinance is not aimed against free speech. It is directed towards the manner in

which the street may be used. *Commonwealth* v. *Davis,* 162 Mass. 510, affd. 167 U. S. 43. The legislative power might forbid public meetings and speaking in the streets entirely. It may limit the use of the streets to certain purposes."

The courts of Pennsylvania are in agreement with the foregoing principles. In *City of Duquesne* v. *Fincke,* 269 Pa. 112, the Supreme Court of Pennsylvania sustained a conviction for the violation of a city ordinance which forbade the holding of public meetings on the streets without obtaining a permit therefor. The Court held, on the authority of *Davis* v. *Massachusetts, supra; Wilson* v. *Eureka City,* 173 U. S. 32, and *State ex rel. Liberman* v. *Van De Carr,* 199 U. S. 552, that the passage and enforcement of the ordinance was not a violation of the Fourteenth Amendment to the Federal Constitution. It was further held that there was no violation of the provisions of the state constitution securing to the people the right of free speech and peaceable assembly, the Court saying, page 118:

"* * * His contention founded thereon, however, overlooks the fact that they do not give to him the right to assemble with others, and to speak wherever he and they choose to go. He would hardly admit that others would have the right so to do in his house, without his consent; and doubtless would concede the same to all other citizens. If he wishes to address an assemblage he must gather his audience together in places where he and they have the right to be for this purpose; and the streets are not such places, since they are intended for passage and not for assemblage. As was said in *Barker* v. *Commonwealth,* 19 Pa. 412, 413:

" 'The streets are common highways, designed

> for the use of public in passing and repassing, and in such temporary occupancy as are incidental to the exercise of these rights, or necessarily connected with them. No one has a right to obstruct a public street by collecting therein a large assemblage of men and boys, for the purpose of addressing them. * * * The common highways were designed for no such purpose. If the purposes of the meeting be lawful, a suitable place can be obtained for it, without obstructing the public in their undoubted right of passing along their own highway. The liberty of speech does not require that the clear legal rights of the whole community shall be violated.' "

See in accord *Barker* v. *Commonwealth,* 19 Pa. 412; *Commonwealth* v. *Egan,* 113 Pa. Super. 375.

Also in accord: *Fitts* v. *Atlanta,* 121 Ga. 567; *Bloomington* v. *Richardson,* 38 Ill. App. 60; *Love* v. *Phelan,* 128 Mich. 545.

In *Love* v. *Phelan, supra,* the rule was succinctly expressed in this manner, at page 549:

> "It is said the ordinance is directed against freedom of speech, but this is a mistake. It is simply directed to the method of using a public space, and is no more a curtailment of the right of free speech than would be an ordinance that prohibited the making of public addresses in the corridors of the city hall."

The cry of free speech is always raised at any municipal attempt to control and regulate the modern complex problems of street and traffic management affecting in an incidental manner, the congregation of persons in public places.

In *City of Tacoma* v. *Roe,* 190 Wash. 444, there was an appeal of a conviction under a municipal ordinance which made it unlawful for persons whose assemblage on a public street or sidewalk obstructed the free and uninterrupted use thereof by other persons, to refuse to move when requested by a police officer. The appellant contended that the ordinance was unconstitutional in that it attempted to abridge the freedom of speech and the right to assemble and petition for redress of grievances. The Court affirmed the judgment below, saying, 446:

> "We think it too obvious for argument that the ordinance has no such purpose or effect. Streets are designed for the traveling public, not as a meeting place or forum for the discussion of local or general public questions. Cities have power, subject to state legislation, to control the streets and regulate traffic upon them * * *."

The Court cited in accord: *State* v. *Sugarman,* 126 Minn. 477, 479, which held:

> "Streets and highways are dedicated, secured, and maintained primarily for public transit, and must be so preserved. All other uses thereof must be subordinated or yield to the right of free and unobstructed passage."

The Court in the *Sugarman* case, *supra,* said that the defendants "conceived the ordinance was directed against free speech and orderly assembly". The Court said (p. 483), in disposing of this contention:

> "But * * * the ordinance is not directed against anything of the kind except in so far as those engaged in thus propagating their views encroach on the right of free passage over public streets."

See also in accord: *Benson v. City of Norfolk*, 163 Va. 1037.

The Supreme Court of Illinois has likewise held, in accord with *Davis* v. *Commonwealth, supra,* that no person possesses the constitutional right to make a public address on social, political or economic subjects in places which the legislature of a state has committed to the control and regulation of local officials. *Coughlin* v. *Chicago Park District,* 364 Ill. 90.

A review of the foregoing authorities indicates that in an overwhelming majority of those American jurisdictions in which the question has been presented for adjudication, headed by the august authority of this Court in the *Davis* case, it is held that municipalities may constitutionally prohibit the use of streets and public places for public meetings and assemblies unless a permit therefor is obtained from the authorities entrusted with the duty and responsibility of supervising the use of such public places, and that ordinances providing therefor are not aimed against free speech at all, but are directed towards the manner in which the streets may be used.

It is submitted that sound reason, as well as the weight of authority supports this view.

(f) So Far as the Decree Below Relates to Public Meetings in Parks, it Cannot be Justified on Any Basis of Discrimination by Petitioners, Since There is no Proof Thereof in the Record, Nor by Any Consideration Based Upon the True Nature of Park Purposes.

Both the District and Circuit Courts found the Jersey City ordinance unconstitutional on its face, so far as meetings in public parks are concerned. The decree declared an absolute right to public meetings in parks, subject only to an easement of recreation in

the public. Both courts, moreover, found that petitioners had exercised discrimination in the enforcement of the ordinance, generally, without indicating that there was no evidence in the record that would support such a finding so far as the public parks were concerned. It is not shown that permits for public meetings in parks were granted *any* person or organization. The soundness of the determinations made by the courts below as to the unconstitutionality of the Jersey City ordinance with respect to its effect upon the claimed right to meetings in parks, must be judged, therefore, in the light, solely, of the true nature and functions of parks, and of applicable statutes governing their use.

At the outset, it is to be noted that Mr. Justice Holmes, in his opinion for the Massachusetts court in the *Davis* case, 162 Mass. 510, 511, considered the right of public control over the use of the parks to represent an *a fortiori* situation. He said:

> "There is no evidence before us to show that the power of the Legislature over the Common is less than its power over any other park dedicated to the use of the public, * * *"

A recent test of the claimed constitutional right to use a public park for the exposition of social and economic views before a large assemblage was the case of *Coughlin* v. *Chicago Park District, supra.* That case involved an application for a writ of mandamus to the Chicago Park District Commissioners to compel the issuance of a permit to Father Charles E. Coughlin to make an address on "Social Justice" at Soldiers Field in Burnham Park. The lower court granted the writ. The judgment was reversed on appeal. The appellate court indicated that the Chicago Park District had, in pursuance of legislative author-

ity, passed an ordinance relative to the control and management of parks, prohibiting the making of public addresses or meetings without a permit from the General Superintendent of the park, under terms authorized by the Park Commissioners. In reversing, the Court cited *Commonwealth* v. *Davis, supra,* and other cases in accord, saying:

> "We are convinced of the soundness of the view expressed in the above mentioned decisions to the effect that no citizen has a right to use, at his pleasure, or on his own terms, public property belonging to and under the control of a municipality, without a permit from a designated officer of such municipality or its executive officers * * * The appellees do not admit the authority for or validity of a regulation prohibiting the use of Soldiers Field for the use of an individual or organization for the purpose of making a public address on a social, political or economic subject. This whole set of contentions is based upon the claim that there is a constitutional and a primary or inalienable right in the appellees to use Soldiers Field for public addresses on those subjects, regardless of the municipality's right to control, manage, and regulate this park facility, with the parks generally, for the best interests of the public. No such right exists in any member of the public. The Legislature by the acts of 1869 and 1933 gave the power of regulation to the appellant commissioners."

Another apt expression of the same point of view is to be found in *Commonwealth* v. *Abrahams,* 156 Mass. 57, 60:

> "The parks of Boston are designed for the use of the public generally, and whether any

park or a part of any park can be temporarily set aside for the use of a portion of the public is for the park commissioners to decide, in the exercise of their discretion."

The matter in hand is thus seen to resolve itself into a question, not of constitutionality or ordinances restricting the right of assembly and free speech in parks, but of the propriety, *in any event,* of such use of places devoted to general park purposes, from either the aspect of the nature of park purposes, generally, or that of the local law of the State of New Jersey on the subject. With respect to the former, petitioners are content to cite the language of Judge Pound, speaking for the New York Court of Appeals, in *Williams* v. *Gallatin,* 229 N. Y. 248. In that case, plaintiff, a taxpayer of New York City, sought to enjoin the Park Commissioner of the City from executing a lease of a building in Central Park to the defendant, Safety Institute of America, on the ground that the proposed lease would involve a diversion of the building from normal park purposes. The proposed lessee was a non-pecuniary organization, aided by state subsidy, whose objects were to study and promote means and methods of safety and sanitation. Its intention was to use the park building for the preservation and exhibition of safety devices and methods. In holding that the proposed lease did not constitute a use of the building for park purposes, the Court said, in an opinion in which Judge Cardozo, then a member of the Court, concurred, pages 253, 254:

"A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. *Perrin* v. *N. Y. Central R. R. Co.,* 36 N. Y. 120, 124. It need not, and should

not, be a mere field or open space, but no objects, however worthy, such as courthouses or school houses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred, even when the dedication to park purposes is made by the public itself and the strict construction of a private grant is not insisted upon * * * Differences naturally arise as to the meaning of the phrase 'park purposes'. Under local statutes it has been held that a public library may be erected in a park without diverting it from such purposes, * * * and the city of Hartford was permitted to turn over a part of the land it had dedicated as a public park to the state for the purpose of a state capitol * * * Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses, and many other common incidents of a pleasure ground, contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of pleasure, recreation and amusement, and thus provide for the welfare of the community. *The environment must be suitable and sightly or the pleasure is abated* * * * The legislative will is that Central Park should be kept open as a public park ought to be, and not to be turned over by the commissioner of parks to other uses. *It must be kept free from intrusion of every kind which would interfere in any degree with its complete use for this end.*

"To promote the safety of mankind and to advance the knowledge of the people in methods

of lessening the number of casualties and avoiding the causes of physical suffering and premature death is the purpose of the Safety Institute of America; to provide means of innocent recreation and refreshment for the weary mind and body is the purpose of the system of public parks. *The relation of the two purposes is at best remote.* No reproach is cast upon the humanitarian aims of the Safety Institute when we say that it must find another place in which to bring them to the attention of the public." (Italics supplied.)

To borrow the language of Judge Pound, the relation between the recreation and refreshment of the weary mind and body, on the one hand, and the hue and cry and excitement, to say the least, of mass meetings devoted to violently controversial harangues on social and economic subjects, attended by crowds of people and large numbers of police, is remote in the extreme. Subservience to the latter objective implies a surrender of the duty and obligations of the municipality with respect to the former. The respective objectives are antithetical.

See also *Williams* v. *Hylan*, 223 App. Div. 48, affd. 248 N. Y. 616; *In Re Central Parkway, City of Schenectady*, 140 Misc. Rep. 727; *Dieppe Corp.* v. *City of New York*, 246 App. Div. 279.

The New Jersey statute dealing with municipal creation and control of parks[6] was referred to in subpoint (a) hereinabove. It was furthermore there seen that under the New Jersey law as expressed in the case of *West* v. *Monmouth Beach, supra*, a diversion of park

[6] See Appendix C.

property by a municipality for any purpose not expressly sanctioned by the statute, was held illegal.

In view of the foregoing, it is respectfully submitted, that whatever may be decided as to the constitutionality of the Jersey City ordinance as applied to meetings on public streets, that part of the decree dealing with public parks should unquestionably be eliminated therefrom, since the ordinance in relation to parks is not only valid on its face, but has not been arbitrarily applied by petitioners.

(g) The Decree Below is Further Objectionable in Disregarding the Rights of the Residential Public of Jersey City to Peace and Quiet.

The Courts below were apparently actuated by the thought that, if no appreciable traffic problem was involved in an application to hold a public assemblage on a particular street, as, for example, in a quiet or secluded residential area, there was no other consideration that could lawfully move the authorities in their deliberations as to whether the permit should be granted. The terms of the decree appealed from, therefore, qualify the otherwise absolute right of the respondents to hold meetings on the streets of Jersey City, to the extent of a reasonable easement of traffic only. This attitude completely overrides the important right of persons residing in less heavily traveled areas of the city, to be free from the annoyance and disturbance of mass meetings on the streets, in front of, or within earshot of their homes. This consideration gains point when it is considered what tumult, if not outright disorder, might be reasonably expected to attend the staging of mass meetings similar to those planned by respondents in December, 1937 and in April and May, 1938, as evidenced by the record herein. Is a residential street,

any more than a business thoroughfare, functionally accommodated to such a purpose? Is it a stifling of free speech and assembly for the municipal officials in charge, in passing upon an application for a meeting on a street, to give thought to the rights of persons residing nearby? Under the decree appealed from, as framed, they may not.

In *Billington* v. *Miller,* 75 N. J. L. 415, the New Jersey Supreme Court, long before the petitioners herein had any voice in the government of the affairs of Jersey City, had before it for consideration an attack upon the validity of an ordinance of that city prohibiting roller skating on a residential portion of Bergen Avenue. In sustaining the validity of the ordinance, the Court said, 416:

> "The evidence shows that the portion of Bergen Avenue on which roller skating was prohibited was so given up to the sport as to constitute a serious injury to abutting property owners, if it did not indeed unreasonably obstruct the public traffic on the street. These abutting property owners were entitled to protection as a part of the public most immediately concerned, and it was quite as much to the common interest of all citizens to secure that protection as to secure an unimpeded passage for vehicles."

(h) The Director of Public Safety Did Not Abuse the Discretion Vested in Him by the Ordinance in Question When He Denied Respondents' Applications for Permits for Street Meetings.

The District Court did not make a finding of fact that the petitioner Casey, as Director of Public Safety, abused the discretion vested in him by the ordinance, when he denied the respondents' applica-

tion for permits for street meetings. Indeed, it cannot be seen how any Court could decide that there was an abuse of discretion under the circumstances which caused the Director of Public Safety to take the action which he did. The evidence clearly indicates that every application which was denied, was denied because, in the opinion of the Director of Public Safety, the proposed meeting would result in riot, disturbance or disorderly assemblage. Never was a permit denied, *ipso facto,* because the applicant was a member of a particular group or party. In every instance, regard was had to the temper of the citizens and the effect which the presence of a proposed speaker would have upon the peace of the community under the existing circumstances. That is not discrimination; it is discretion. That is the very purpose for which the ordinance was passed. The very object which it seeks to accomplish is to preserve the public peace and good order by placing upon the shoulders of the Director of Public Safety the responsibility of determining whether or not a meeting would result in disorder. He must exercise the discretion imposed upon him, and his determination should not and cannot be upset in the absence of a clear and convincing showing that there has been an abuse of such discretion. No rule of law is better established: *Gaines* v. *Thompson,* 74 U. S. 347; *Ness* v. *Fisher,* 223 U. S. 683; *Louisiana* v. *McAdoo,* 234 U. S. 627, 633; *Work* v. *Rives,* 267 U. S. 175, 183; *Procter & Gamble Co.* v. *Coe,* 96 Fed. (2d) 518, 520; *Garneau* v. *Eggers,* 113 N. J. L. 245. It is a rule grounded in common sense. Manifestly, a court should not undertake to place itself in the position occupied by the Director of Public Safety and undertake to perform the functions imposed upon that official by

the law. The statute in question calls for his judgment—not the Court's judgment, and unless the Court finds by convincing proof that there has been a clear violation of duty on the part of the municipal officer by abusing the discretion which the law imposes upon him, it is not justified in disturbing his determination.

In *Sullivan* v. *Shaw*, 6 Fed. Supp. 112 (D. C. Cal.), the United Front Conference Against Hunger, an organization designed to protest the hunger and starvation of workers, applied to the City Council of Los Angeles for a permit to hold a protest parade. The City Council denied the permit, under a municipal ordinance designating a certain portion of the City, including the streets in which the plaintiffs desired to parade, over which parades were not permitted without a permit from the Council. The plaintiffs alleged in their bill that similar applications by them had been theretofore denied by the Council, whereas applications for similar parades by other bodies had been granted, and it was further set forth that the action of the Council was motivated by the political and economic views of the plaintiff, and constituted unlawful discrimination, under the Fourteenth Amendment to the Federal Constitution. In denying the application for the injunction, the District Court said:

> "The power to grant or refuse permits must, however, be exercised without discrimination. A permit to parade may not be granted to one and refused to another under similar circumstances. Time, circumstance, and occasion, however, properly enter into the decision of the city council. That body might well consider seriously the granting of a permit for a parade of 60,000 peo-

ple, or any considerable fraction of that number, including an indefinite number of children withdrawn from public schools, through the main business streets of the city, necessarily loosely organized, not responsive to or amenable to the discipline that should attend such a demonstration and with possible incitation to riot and disorder.

"* * * *The city council may, however, examine all the circumstances attending such applications, and if there appears a reasonable basis for its action, such action is conclusive. It does not matter that the Court might differ from its conclusions.* Under the circumstances here presented, the city council exercised a reasonable discretion in the refusal of the permit." (Italics supplied.)

The application of the foregoing rule is especially appropriate in New Jersey where liability for property damage and personal injury sustained through riot is imposed on the municipality by statute. (See New Jersey Revised Statutes of 1937, Secs. 2:63-1; 2:63-10.)[7]

It is true that the petitioner Casey based his denial of the permits upon information gleaned by him from the public press, and other available sources of information, to the effect that the proposed speakers were communists and radicals, and exponents of a political philosophy which would be violently resented by a large number of the citizens of Jersey City. Many exhibits of newspaper clippings, magazine articles, reports of committees and the like, were admitted in evidence for the purpose of showing a basis for the so-called state of mind which led to the refusal

[7] See Appendix D.

by the petitioner of the applications in question. The Director of Public Safety was justified in relying upon such information. It furnished a reasonable basis for the "state of mind", which led him to make his decisions. And if there was a conceivably reasonable basis for his action, it cannot be said that there was an abuse of discretion, *regardless of what the reaction of the court below, or of this Court, or of any person other than the Director, would have been in similar circumstances.* Reliance upon information of the character described was reasonable because under the circumstances which obtained no better information could be secured. Under the ordinance an application may be submitted not less than three days before the proposed meeting. Manifestly, it would be impossible for the Director to ascertain by legally competent evidence, within a three day period, whether or not a proposed speaker's prior activities had been such as would arouse resentment on the part of the citizens. To require him to do so, would be tantamount to compelling him to conduct a judicial inquiry every time an application for a permit was received. Even if it were feasible for him to do so, and even if as a result of such inquiry he determined to his own satisfaction that the information carried in the public press was untrue, nevertheless the most important element entering into his decision would not be affected, namely, what the public at large, which secures its information from the newspapers and similar sources, thought that the proposed speaker stood for. That is what the Director of Public Safety would have to deal with, because he is charged with the duty of avoiding riots and disturbances, and it would be upon the basis of information brought to the public by the press that the public would be reasonably expected to react.

It is contended, therefore, that for all of these reasons the petitioner Casey was justified in acting upon the information gleaned from the sources which were available to the public at large, and in proceeding upon the theory that where there was smoke there must be fire. The nature and extent of the information upon which the refusal to grant these permits was based, has heretofore been reviewed in detail, and we submit that it formed a substantial basis for the Director's exercise of discretion, and that consequently there was no abuse of discretion.

POINT II.

The injunction entered below is defective because vague, uncertain and impracticable of enforcement by the Court or of compliance by petitioners.

(a) The Injunction is Impracticable of Enforcement by the Court.

The injunction entered by the Court below is such that it will not be feasible for it to enforce the provisions of the decree. It should, therefore, not have been entered. An enforcement of its provisions will require the District Court to exercise supervisory power over the administration of government in Jersey City and to interfere with the orderly exercise of governmental duties. The injunction entered in the decree below, with respect to certain of the matters complained of, is such that the District Court has constituted itself an ordinance making body and has directly involved itself in the detailed administration of the public business of the city.

Having declared the street meeting ordinance unconstitutional on its face, both with respect to meet-

ings on the streets and in the public parks, the orderly step for the Circuit Court to have taken in reviewing the injunction as entered by the District Court would have been to enjoin the enforcement of the ordinance by petitioners, in terms. In lieu thereof, however, the Circuit Court affirmed the provisions of the decree, as entered, which enacted that as to meetings in parks, persons intending to hold such meetings should make application for a permit three days in advance of the meeting. To whom the application should be made is not expressly provided. The permit may be denied the applicant if the time or place designated in the application is in reasonable conflict with the public recreational purposes of the parks. Nowhere, however, is there any specification in the decree or in the opinion of the Court as to what such recreational purposes of the parks may be. With respect to meetings on the public streets, a similar application for a permit is required to be made, and the decree compels the issuance thereof, subject only to a reasonable interpretation by petitioners of the easement of public passage on the streets. Again, no *criteria* are furnished either in the decree or in the opinion as to what may constitute a reasonable interpretation of the said right of public passage.

It is further ordained by the Court in its new status as the governing body, *pro tanto*, of Jersey City, that when such meetings are held, adequate police protection shall be afforded and that petitioners are to see to it that the speakers are free from interruption by such persons as may be present at such meetings. It is provided, however, that such protection shall not be required when inconsistent with the maintenance of public order by petitoners in the remainder of the city.

The remaining portions of the decree are equally vague and therefore impracticable of enforcement by the Court. Such general provisions are made in the decree, for example, as that the petitioners should not act in an unlawful manner toward the respondents with respect to such matters as their liberty to go about the city freely, to communicate with each other and with other persons on the streets, to be free from unlawful arrest, and to circulate and distribute pamphlets and leaflets, provided that the distribution of said leaflets is carried out in an orderly manner. The effect of these provisions of the decree is simply to enjoin illegal conduct, to order the petitioners to do what is right. Enforcement of such a general direction is the proper function of the police authorities of the municipality. The number of subjective *criteria* embodied in the entire decree is such as not only to make any attempt at enforcement impracticable in the extreme, but likely to result in a perversion of the proper and peculiar functions of a court. A decree which cannot be feasibly enforced within the due limits of the true functions of a court should not be rendered in the first instance. *Texas, etc. R. R. Co.* v. *Marshall*, 136 U. S. 393; *Poultry Producers* v. *Barlow*, 189 Cal. 278.

(b) The Decree is Impracticable of Compliance by Petitioners.

The accuracy of the characterizations of the decree made hereinabove is apparent upon close examination of the provisions thereof. Paragraph B4(a) enjoins petitioners from restraining respondents in the holding of meetings and assemblies in the parks and open air—

> "* * * provided * * * that such permit may be refused these plaintiffs or any of them only

for the reason that the particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks."

Paragraph B4(b) requires petitioners to afford police protection at such park meetings—

"* * * provided only that such protection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City."

Paragraph B4(d) enjoins petitioners from refusing respondents the right to hold public meetings on any of the public streets, highways or thoroughfares of Jersey City—

"* * * provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpretation by the defendant of the acknowledged easement of public passage over any of said public streets, highways, thoroughfares or places of the City of Jersey City."

Obviously, as many interpretations of these provisos are possible, as is the number of particular public officials who might be called upon to construe them in relation to a particular application. It is not at all unreasonable to suppose that respondents might have one interpretation, the petitioner Casey another, and the Court hearing a contempt application, a third. Each of the provisos set forth above is in flagrant disregard of the rule that an injunction, being subject to penal enforcement in the event of violation,

should be clear and certain in its terms, and free of the necessity, on the part of those to whom it is directed, of drawing inferences from or making interpretations of its context.

In *National Labor Relations Board* v. *Bell Gas & Oil Co.*, 98 F. (2d) 405, 406 (C. C. A. 5, 1938), it is said:

> "Mandatory injunctions should be clear, direct, and unequivocal. They should not be hedged about by conditions and qualifications which cannot be performed, or which may be confusing to one of ordinary intelligence."

In *Evening Times Printing & Publishing Co.* v. *American Newspaper Guild*, 124 N. J. Eq. 71, 75, there was an appeal from an injunction which restrained the defendants "from making any illegal effort to coerce the complainant to enter into any contract or agreement with all or any of the defendants". In striking the injunction the Court of Errors and Appeals of New Jersey said:

> "* * * It is illegality that is restrained. How are the defendants to know with certainty whether a proposed act is or is not illegal? Disobedience of an injunctive order may be followed by a finding of guilt in criminal contempt and by punishment accordingly. A writ of injunction should be the criterion for the person who is enjoined. It should be plain and certain on the face of it. *Richards* v. *West*, 3 N. J. Eq. 456. To restrain the threatening or doing of things 'unlawful' and not to point out what specific acts are under restraint is to leave the order vague and uncertain. * * *"

In *Collins* v. *Wayne Iron Works*, 227 Pa. 326, on a bill for injunction by a property owner for the abate-

ment of noise made by a nearby iron works factory, a writ was entered by the trial court restraining the operation by the defendant of its works "by making noises * * * so as to render the premises of the plaintiff described in the said bill unfit for use and enjoyment as a residence by a *reasonable and normal person.*" (Italics supplied.) The Court on appeal modified the injunction, using this language, pages 330, 331:

> "The entry of an injunction is, in some respects, analogous to the publication of a penal statute. It is a notice that certain things must be done or not done, under a penalty to be fixed by the court. *Sullivan* v. *Jones & Laughlin Steel Co.*, 222 Pa. 72. Such a decree should be as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it; and, when practicable, it should plainly indicate to the defendant all of the acts which he is restrained from doing, without calling upon him for inferences or conclusions about which persons may well differ. * * * as the defendant's conclusion as to what constitutes 'a reasonable and normal person' may well differ from that of the plaintiff, it would seem that the only safe way to comply with the decree would be to entirely stop the running of its machinery. * * *"

There are numerous adjudications in accord: *City of Louisville* v. *Lougher*, 209 Ky. 299; *Robert E. Hicks Corp.* v. *National Salesmen's Training Association*, 19 Fed. (2d) 963, 965 (C. C. A. 7th 1927); *Ex Parte Heffron*, 179 Mo. App. 639; *Magel* v. *Gruetli Benevolent Society*, 203 Mo. App. 335; *Fort Worth Acid Works* v. *City of Fort Worth*, 248 S. W. 822 (Tex. Civ. App. 1922); *Ballantine* v. *Webb*, 84 Mich. 38; *Earl* v.

Brewer, 248 App. Div. 314; *Lone Star Salt Co.* v. *Blount,* 49 Tex. Civ. App. 138.

In *L. H. Henry & Sons* v. *Rhinesmith,* 219 Ia. 1088, 1093, the rule is stated:

> "Where one may subject himself to the perils of contempt of court for violation of an injunction, he is entitled to know specifically what the things are that he is restrained from doing. * * *"

The decree herein is in marked violation of the settled principles set out in the foregoing cases.

(c) The Vagueness of the Decree Has the Effect of Preventing Petitioners, at Their Peril of Criminal Liability, From Drafting a New Ordinance.

The terms of the decree as entered by the court, in the respects above noted, do not apprise petitioners of the things that they are restrained from doing. Unless the decree is corrected, petitioners are under the alternative of either completely abdicating the exercise of their duties and responsibilities with respect to the maintenance of safety and order on the streets and public places of Jersey City, or of running the peril of criminal liability consequent upon an interpretation by them of the decree, that may differ from that of a court hearing a contempt application. If, contrary to what has been urged hereinabove in Point I, the Jersey City ordinance or the manner of its enforcement by petitioners, is found to be unconstitutional, then petitioners are, at the very least, entitled to an authoritative definition and a certain direction from the Court as to their obligations with respect to the constitutional rights adjudicated. In the event of such direction petitioners will be enabled to take the

orderly step of drafting a new ordinance in keeping with the instructions of the Court. In the present posture of the decree, on the other hand, there can be envisioned only a future of confusion and uncertainty on the part of all the parties to this proceeding.

POINT III.

The District Court was not invested with jurisdiction of the subject matter of the bill of complaint.

Petitioners propose to indicate under this Point that the record of the proceedings below does not show any grounds upon which the District Court was justified in assuming or retaining jurisdiction of the subject matter of the bill of complaint. If this point is established to the satisfaction of the Court, then the decree appealed from must be reversed, without any reference to the meritorious questions considered in the antecedent points of this brief.

(a) The question of jurisdiction was in issue, having been raised by motion to dismiss the bill and by appropriate denials of the jurisdictional allegations in the answer, and it was incumbent upon the trial court to insist upon proof of the jurisdictional facts before assuming jurisdiction over the cause generally.

It is thoroughly established that the Federal District Courts are courts of limited jurisdiction, depending upon the express provisions of the Federal Statutes. *Klein* v. *Construction Co.*, 260 U. S. 226; *Mansfield, C. & L. M. R. R. Co.* v. *Swan,* 111 U. S. 379. No presumption will be entertained as to the existence of jurisdictional facts. Such facts must be alleged, and if controverted, must be proved. *Yeandle* v. *Pennsylvania R. R. Co.*, 169 F. 938 (C.

C. A. 3rd, 1909); *Klenk* v. *Byrne,* 143 F. 1008 (C. C. Wash. 1906).

The purported basis of jurisdiction in the present case is laid, in the alternative, under Judicial Code, Sec. 24 (1), Act of Cong. Mar. 3, 1911, C. 231, Sec. 24, 36 Stat. 1091, or under Judicial Code, Sec. 24 (14), Act of Cong. cit. *supra,* 36 Stat. 1092.

Section 24 (1) provides for original jurisdiction in the Federal District Court in all suits of a civil nature at common law or in equity where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, if the suit arises under the Constitution or laws of the United States.

Section 24 (14) provides for one of a number of situations within which original jurisdiction may be assumed by the Court without regard to the three thousand dollar jurisdictional requirement of Section 24 (1). Section 24 (14) is applicable to all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any State law, statute, ordinance, etc., of any right, privilege or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens, or of all persons within the jurisdiction of the United States.

Paragraph 6 of the Bill of Complaint contains the jurisdictional allegations applicable to Section 24 (1) aforementioned, and Paragraph 7 of the Bill makes the *pro forma* recitals designed to meet the requirements of Section 24 (14). Both of these allegations were brought into issue below by the petitioners, first, by direct traverse in the answer of the stated paragraphs of the bill, and, secondly, in the form of a motion to dismiss the bill for lack of jurisdiction, which was denied by the trial court,

The jurisdiction of the court below having been brought into issue by petitioners, it was incumbent upon the trial court to require proof of the jurisdictional facts, and its failure to do so constitutes error. The federal district courts must assure themselves of federal jurisdiction in every case before them. *Miller* v. *First Service Corp.*, 84 F. (2d) 680 (C. C. A., N. D., 1936).

In *McNutt* v. *General Motors Corp.*, 298 U. S. 178, the Court said, in reference to the Act of 1875 (28 U. S. C., Section 80), empowering and authorizing District Court Judges to dismiss an action where it appears that the jurisdictional facts are missing:

> "The authority which the statute vests in the Court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof. * * * The Court may demand that the party alleging jurisdiction justify his allegations by a preponderance of evidence."

In *Kvos* v. *Associated Press*, 299 U. S. 269, an action was brought by the Associated Press to enjoin a radio station from appropriating and broadcasting news gathered by the plaintiff or its members during the period that such news retained commercial value to the plaintiff. The bill of complaint contained the usual recital to the effect that the amount concerned in the action involved the sum of $3000, exclusive of interest and costs. The defendant filed a motion to

dismiss, assigning, among other grounds, that the Court was without jurisdiction because the matter in controversy did not exceed $3000. Affidavits were presented by both sides on the return of the motion and the Court found that "the amount in controversy * * * must be construed to be in excess of $3000. exclusive of interest and costs". The bill was dismissed, however, on the merits, the Court finding no grounds for an injunction. On appeal, the Circuit Court reversed, finding in favor of the plaintiff on the meritorious questions involved, and also concluding that "the several millions of dollars alleged to be invested in the association's business may well be damaged to the extent of $3000. by the pirating practices described". The Supreme Court reversed on the ground that, under the circumstances, the plaintiff-respondent had the burden of showing that the case was within the District Court's jurisdiction and had failed to carry it. The Court (p. 277):

> "The bill seeks redress for damage to the respondent's business and for damage to the business of some or all of its members. The right for which the suit seeks protection is, therefore, the right to conduct those enterprises free of the alleged unlawful interference by the petitioner. *No facts are pleaded which tend to show the value of that right.* The complaint contains nothing to the purpose save the general statement that the damage to which the respondent is being subjected is in excess of three thousand dollars and the amount involved is in excess of that sum. Such a formal allegation is sufficient, unless the bill contains others which qualify or detract from it in such measure that when all are considered together it cannot fairly be said that jurisdiction appears on the face of the complaint, in which

case the suit should be dismissed by the court *sua sponte* or upon the defendant's motion. In this case the formal allegation is not reenforced or strengthened by other portions of the complaint; neither is it neutralized or weakened by qualifying or detracting allegations. In effect it stands alone. Therefore the court would not have been bound to dismiss upon a motion based solely on alleged insufficient pleading of the amount in controversy; though it might, of its own motion, have entered upon an inquiry to ascertain whether the cause was one over which it had jurisdiction. *But where the allegations as to the amount in controversy are challenged by the defendant in an appropriate manner, the plaintiff must support them by competent proof.*" (Italics supplied.)

The Court then considered the appropriateness of the method employed by the defendant to raise the question of jurisdiction and decided that it was proper. In this connection, the Court said that the raising of the question of jurisdiction (p. 278),

> "* * * could have been done by answer but the time for answer had not arrived when the rule to show cause was issued * * *."

The Court went on to say:

> "* * * The motion required the trial court to inquire as to its jurisdiction before considering the merits of the prayer for preliminary injunction. And in such inquiry complainant had the burden of proof. * * * Assuming, without deciding, that in the circumstances disclosed the respondent has standing to maintain a suit to redress or prevent damage caused its members by petitioner's conduct, the allegation of possible damage to them is wholly inadequate, because

> the asserted danger of loss of members is a mere conclusion unsupported by even a suggestion that withdrawal has been threatened by any newspaper, and no intimation is given of the character or extent of the damage they would suffer by such withdrawal. The respondent having failed to support the allegations as to amount in controversy the District Court should have dismissed the bill."

In *Oregon R. & Nav. Co. v. Shell, et al.*, 125 F. 979, 981 (C. C. Wash. 1903), in dismissing a bill in equity for failure to establish the requisite jurisdictional amount, the Court said:

> "The pleadings make an issue, and the burden of proof is upon the complainant, and, as the case was tried only upon the complainant's theory, no evidence was offered with respect to the value of the right of way nor of the amount of damages caused by the railroad, the Court is unable to make the findings necessary to sustain its jurisdiction. Therefore the case must be dismissed."

Under the cited authorities, accordingly, even if the asserted grievances of the respondents were of a pecuniary nature, having a consequence or value calculable in money, and immediately dependent on the litigation, no proof of the value of the matters in controversy was at any time offered by the respondents or required by the Court. There, therefore, never existed any tenable basis for jurisdiction under Judicial Code Section 24 (1), and, petitioners having raised the question in appropriate manner, the bill should have been dismissed.

(b) The matters in controversy were not shown to have a value in excess of $3,000.; the rights claimed did not have a "pecuniary" value or consequence, *i. e.*, "calculable" in money and "immediately", not remotely or contingently, dependent on the litigation.

Even had the trial court required, and respondents attempted to offer, proof of the pecuniary value of the subject matter of the bill, they would not have been able to establish such value, under the cases, because of the nature of the subject matter directly involved in the litigation.

The rights claimed, considered, as they must be, entirely apart from any remote and consequential gains, losses, liabilities or profits that might ultimately hang upon their present enjoyment, are the alleged rights to hold street meetings in the public places of Jersey City, to freely go about the business of organizing potential associates in the activities of the respondents, to be free from physical molestation unaccompanied by the due processes of arrest and arraignment, to be free from exclusion from the city, and kindred rights of a similar nature, all essentially without any direct, immediate, pecuniary consequence.

In *Smith* v. *Adams,* 130 U. S. 167, 175, Justice Fields construed the words, "the matter in controversy" as requiring a showing of,

> "the pecuniary result to one of the parties immediately from the judgment."

In *Wheless* v. *St. Louis,* 180 U. S. 379, 382, the language used is:

> "The 'matter in dispute' within the meaning of the statute is not the principle involved, but the pecuniary consequence to the individual party dependent on the litigation * * *."

No matter how precious or fundamental in importance the right involved, it is not amenable to the test of jurisdictional amount if the value of the right is not calculable in money.

In *Kurtz* v. *Moffitt*, 115 U. S. 487, for example, it was held that the personal freedom of an individual who was allegedly unlawfully imprisoned, did not constitute a subject matter capable of being valued in money and that, therefore, a writ of habeas corpus was not removable from a state court into the federal court, within the language of the removal statute, limiting the federal jurisdiction in such cases to,

> "Suits of a civil nature at law or in equity where the matter in dispute exceeds, exclusive of costs, the sum or value of $500.00."

The Court said (p. 498):

> "From this review of the statutes and decisions, the conclusion is inevitable that a jurisdiction, conferred by Congress upon any Court of the United States, of suits at law or in equity in which the matter in dispute exceeds the sum or value of a certain number of dollars, includes no case in which the right of neither party is capable of being valued in money; * * *"

The Court relied upon the language used by Chief Justice Taney in *Barry* v. *Mercein*, 5 How. 103, 120, to the effect that:

> "The words of the Act of Congress are plain and unambiguous. They give the right of revision in those cases only where the rights of property are concerned, and where the matter in dispute has a known and certain value, which

can be proved and calculated, in the ordinary mode of a business transaction. There are no words in the law which by any just interpretation can be held to extend the * * * jurisdiction beyond those limits and authorize us to take cognizance of cases to which no test of money value can be applied."

In *Oregon R. & Nav. Co.* v. *Shell, et al., supra,* the Court said (p. 981):

"* * * the case falls within the rule that, where jurisdiction depends upon a specified amount, jurisdiction does not attach to any case in which the right involved cannot be calculated in money."

In *Greenough* v. *Independence Lead Mines Co.,* 43 F. (2d) 659, 660, (D. C. 1930), the Court found that:

"The controversy has no value which can be calculated and ascertained in money to meet the jurisdictional amount * * *."

Not only must the subject matter of the suit be calculable in money, but the financial consequence dependent upon the litigation must be *directly, not remotely or contingently,* dependent thereon. It is furthermore immaterial what the collateral consequences of the decree or judgment may ultimately turn out to be, even though directly caused by, or dependent upon such decree.

In *Healy* v. *Ratta,* 292 U. S. 263, the question involved was whether the jurisdictional requirement was satisfied by a proceeding brought to enjoin a municipal chief of police from enforcing a statute which imposed an allegedly unconstitutional license fee requirement upon itinerant hawkers or peddlers. The

trial court was satisfied with the jurisdictional showing; but upon appeal the decree was reversed, the Court holding, page 267:

> "Appellee neither asks, nor could he properly be awarded a decree in the present suit restraining enforcement of the law by police officers elsewhere, and the collateral effect of the decree, by virtue of *stare decisis*, upon other and distinct controversies may not be considered in ascertaining whether the jurisdictional amount is involved, even though their decision turns on the same question of law."

In *Youngstown Bank* v. *Hughes*, 106 U. S. 523, it was considered that the jurisdictional amount was not involved in the claimed or alleged right of a bank not to be subjected to the damaging publicity consequent upon its being subpoenaed to reveal the amount of its deposits. The Court said that any damages to the bank would be "remote and speculative."

In *New England Mortgage Security Co.* v. *Gay*, 145 U. S. 123, the Court said, at page 130:

> "It is well settled in this court that, when our jurisdiction depends upon the amount in controversy, it is determined by the amount involved in the particular case, and not by any contingent loss either one of the parties may sustain by the probative effect of the judgment, however certain it may be that such loss will occur."

In *Elliott* v. *Empire Natural Gas Co.*, 4 F. (2d) 493, 500, (C. C. A. 8th, 1925) it was said:

> "It is what the appellees will directly lose in this suit that determines the jurisdictional value of the matter involved. It is not what they may lose as an indirect result of this suit."

The foregoing authorities make clear the irrelevancy of the contentions urged by respondents with respect to the potential losses which the workers of Jersey City will sustain if the respondents are not permitted to carry on the activities allegedly interrupted by the petitioners. The generality of this contention suffices to establish that there is no "direct", "pecuniary" and "calculable" subject matter involved in this litigation. The most that can be said is that if the respondents are permitted to exercise the activities purportedly secured to them by the decree of the court below, they may, perhaps, consequently have greater success in organizing particular types of labor unions in Jersey City; that if they are successful in that regard, they may realize increased revenues in the form of dues and other perquisites, and that such revenues may ultimately amount to sums exceeding the jurisdictional amount required by Section 24 (1). It needs no extended discussion to establish that such pecuniary rights, if any, contended to inhere in the activities of the respondents, are subject to every one of the characterizations made in the decided cases, to wit, "remote", "speculative", "hazy", "contingent" "indirect" and "incalculable".

Respondents seek to obscure the sharp and definitive requirements of the cases, as herein developed, with respect to the necessity of showing that the rights involved have a value calculable in money and directly affected by the litigation, by elaborating a blanket formulation of the value of civil rights generally. There is no general rule applicable in this situation with regard to the value of civil rights generally. The specific "matters in controversy" involved in this litigation must be appraised, in each of the several instances, on their own footing.

A showing of requisite jurisdictional minimum as to the causes of action for assembly and free speech in public places is not met by the citations of such cases as *Wiley* v. *Sinkler*, 179 U. S. 58 and *Nixon* v. *Herndon*, 273 U. S. 536. Those cases depended upon the well established common law action at law for damages based upon an interference with the right of a citizen to vote (a right of action cumulatively based on statute in case of federal elections). As Mr. Justice Holmes said in *Nixon* v. *Herndon, supra*, that type of cause of action for damages was well and firmly established in the common law for a period of over two hundred years. So far as presumptive jurisdictional amount is concerned, those cases are in the same category as common law actions for negligence, false imprisonment and the like, as will clearly appear from an inspection of the cases cited in the opinion of the court in *Wiley* v. *Sinkler, supra*. They were not intended, and cannot fairly be understood to stand for the broad proposition that *any* social, political or civil rights are presumably of a value in excess of $3,000.00. If that were so, there would have been no occasion for several of the other subdivisions of Section 24, such as (12) and (14), providing for dispensation with the usual jurisdictional minimum, in certain specific types of action for particular civil deprivations. Any such contention is, furthermore, rebutted by such authority as that of the case of *Smith* v. *Adams, supra*, in which no pecuniary consequence was found to be involved in a suit over the right to contest an election determining the designation of a county seat. The thesis contended for is furthermore contrary to such authority as that of *State of Ohio* v. *Cox*, 257 F. 334 (D. C. 1919). In that case, there was filed a bill to enjoin the submission of the Eighteenth Amendment to the Ohio Assembly for ratification. The bill was

dismissed on the ground that the requisite jurisdictional amount was not involved. The Court said (p. 343):

> "The jurisdiction of this court is limited to actions involving $3000., not including interest and costs. The bill alleges that the jurisdictional amount is involved. Looking at the plaintiff, or those he represents, as taxpayers, there is no allegation that any particular sum to him, or to any of them, is involved; and considering the plaintiff and those he claims to represent, *as citizens of the United States seeking to remedy a political wrong,* there is no amount of money involved." (Italics supplied.)

Nor does the case of *Truax* v. *Raich,* 239 U. S, 33, relied upon by respondents, support the view that the rights claimed to have been invaded in this case are presumptively of a value in excess of the jurisdictional requirement. The right involved in that case was that of an alien, residing in this country, to be free to pursue a livelihood without the restriction of a state statute interfering with his free employment. Jurisdiction was assumed by the court without any reference to the question as to the amount in controversy, because of the interference with rights secured by laws of the United States providing for equal rights of all persons within the jurisdiction of the United States, under the predecessor section to Judicial Code, Section 24(14), which is one of the fixed exceptions to the requirement of a showing of jurisdictional amount. The case was so understood by Judge Learned Hand; in *Marcus Brown Holding Co.* v. *Pollak,* 272 F. 137 (D. C. 1920) at page 140. The instant situation, as will be developed hereinafter, falls within none of the exceptions.

In *International News Service* v. *Associated Press*, 248 U. S. 215, likewise relied upon by respondents, the matter in controversy directly concerned the obviously tremendously valuable rights of a news service association in protecting the inviolability of its news releases from pirating by non-members. That the case directly involved a financial stake in excess of the jurisdictional amount is indicated by the reference of the court in its opinion, page 236, to rights of a pecuniary nature.

There is obviously no reasonable analogy between either of the cases thus relied upon and the rights involved in the present case. In the *International News Service* case the rights involved were sufficiently pecuniary, so far as appeared from the record before the Court. In that case, furthermore, as has been expressly pointed out by the Supreme Court in the case of *Kvos* v. *Associated Press*, 299 U. S. 269, at page 279, the answer filed did not challenge the jurisdiction. There was no assignment of error raising the question and no argument thereon was presented to the Court.

The only fairly debatable argument concerning a showing of the requisite jurisdictional minimum, made by respondents, is based upon the contention that the deprivations revolving about the molestation and physical restraint of some of the respondents by the petitioners, concern a right, which, if asserted in a common law action for false imprisonment, would presumably come within the jurisdictional minimum of Section 24(1). We put aside the obvious objections to this argument inherent in the fact that neither the prayers of the bill of complaint, nor the findings of the court, so far as any of the individual respondents in this action are concerned, have to do with any claims of false imprisonment, and

say, simply, that this Court has held; that in an action or proceeding in the federal courts, where a requirement of jurisdictional minimum is necessary, the right of freedom from unlawful incarceration is not, *per se*, a right susceptible of pecuniary valuation for jurisdictional purposes. *Kurtz* v. *Moffitt, supra*; *Barry* v. *Mercein, supra.* The rule of presumptive jurisdictional amount applies only in a technical action at law for damages for false imprisonment. See, *e. g., Hynes* v. *Briggs*, 41 F. 468. Otherwise the holdings of the Supreme Court in the *Kurtz* and *Barry* cases, *supra*, would be meaningless. Even if, however, it should be determined that the cause of action based upon detention is presumptively of a value within the jurisdictional limitation of Section 24(1), this court must reverse the judgment below so that those portions of the decree based upon the other causes of action laid in the complaint may be eliminated therefrom, for the reasons particularly discussed in subpoint (m) of this Point, hereinafter.

Respondents finally contend, in reply to the argument presently urged by petitioners, that the bill of complaint sets out a single cause of action founded upon conspiracy to deprive respondents of their civil rights generally, and that this cause of action is presumptively within the jurisdictional minimum. Any one of several answers may serve to dispose of respondents' contention in this regard. Nowhere in the complaint is there set out in cognizable form any such omnibus cause of action for conspiracy as that described. There are merely allegations concerning the adoption by petitioners of several deliberate official policies in respect of several independently formulated subjects of complaint, as for example, exclusions from the city, interferences with labor organizational activi-

ties, prevention of distribution of circulars, and denial of the right to speak in public places. The District Court Judge who presided at the trial certainly did not understand that the complaint charged a conspiracy of the nature now sought to be raised from the bill (R., p. 166). Even were such a general charge of conspiracy made in the complaint, the position taken by respondents is, in any event, frivolous in that, by the weight of authority, there is no such thing as a civil action for conspiracy, independent of the legal cause of action for damages ensuing upon the commission of the overt acts conspired. As restated in *Allen* v. *Ramsey,* 41 Pac. 2d. 658, 665 (Okl. Sup. Ct. 1935), the rule is:

> "'Accurately speaking, there is no such thing as a civil action for conspiracy. There is an action for damage caused by acts pursuant to a formed conspiracy, but none for the conspiracy alone.'"

The law on criminal conspiracy, where an indictment lies for the mere conspiracy, without regard to the unlawfulness of the objects conspired or the damage inflicted, is of course, distinguishable.

In *Hutchins* v. *Hutchins,* 7 Hill (N. Y.) 104, 107, it is said:

> "A simple conspiracy, however atrocious, unless it resulted in actual damage to the party, never was the subject of a civil action; not even when the old form of a writ of conspiracy, in its limited and most technical character, was in use."

See also *Sleeper* v. *Baker,* 22 N. D. 386; and 5 R. C. L. 1090, where the rules stated in the quoted ex-

cerpts are described as representing the weight of authority. In other cases, the *quasi* civil action for conspiracy is described as being merely an action on the case, subject to all the rules and incidents governing such an action. *Smith* v. *Rines,* 22 F. Cas. 13,100; *Doremus* v. *Hennessy,* 62 Ill. App. 391, affd. 176 Ill. 608; *Livermore* v. *Herschell,* 3 Pick. (Mass.) 33; *Jones* v. *Baker,* 7 Cow. (N. Y.) 445; *Howland* v. *Corn,* 232 F. 35; *May* v. *Wood,* 172 Mass. 11. Since the overt acts alleged to have been conspired, as for example, the denial by municipal officials of permits to meet and speak in streets, are concededly not the subject of a tort action on the case for damages, there could be no civil action for damages, within the rules set forth above, based on the supposed general conspiracy now alleged to be charged in the complaint. There, therefore, does not exist any presumption of the minimum jurisdictional amount in controversy, under the analogy of suits involving rights subject to tort actions for damages.

(c) The rights involved in this case are in no instance "secured" by the United States Constitution, and therefore that instrument does not bring them within the 14th subdivision of Judicial Code, Section 24, which dispenses with the necessity for jurisdictional amount.

(1) Meaning of "right, privilege or immunity secured", within Section 24 (14).

Respondents urge as an alternative basis for the assumption of jurisdiction over this cause by the trial court, the provisions of Judicial Code, Section 24 (14), under which a showing of jurisdictional amount is not required. The contention is untenable for a number of distinct and separate reasons. The section is as follows:

"Of all suits at law or in equity authorized by

law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, *secured* by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

We have designedly italicized the word "secured" in the foregoing excerpt. It is settled by case authority that the word, "secured", under the subdivision, has reference to rights, privileges or immunities *created in the first instance* by the United States Constitution, and not merely rights antecedent to the Constitution in origin, but merely guaranteed by it or by one of the Amendments. It will appear upon analysis that none of the rights or alleged grievances involved in this litigation fall within the category of rights, privileges or immunities created in the first instance by the United States Constitution or the Amendments, but, on the contrary, are fundamental rights having their inception in the several states prior to the adoption of the Federal Constitution and are merely guaranteed by it, or by the Fourteenth Amendment thereto, as judicially construed, from invasion by the states. An exposition of these propositions requires a consideration of the development of these rules, which we have hereinabove described as settled, from their beginning.

In the *Slaughter House Cases*, 16 Wall. 36, it was contended that a Louisiana statute which created a corporation and gave it the exclusive privilege of maintaining slaughter houses in certain areas and

forbade their maintenance by other persons, was a violation of the privileges and immunities secured to citizens of the United States under the Fourteenth Amendment, and a determination to the contrary by the Supreme Court of Louisiana was taken on writ of error to the United States Supreme Court. The Court analyzed the right claimed to have been invaded, found that it consisted of the fundamental right of all persons to follow a vocation, and held that that right was not a privilege or immunity belonging to persons by virtue of their national citizenship, but only by virtue of their state citizenship. In distinguishing between rights pertaining to persons as citizens of a state and those which appertain to their status as citizens of the United States, the Court considered the former to embrace "those rights which are fundamental", and "nearly every civil right for the establishment and protection of which organized government is instituted". The Court held that the claimed right in question was in the category described and therefore within the sole care and protection of the states and not given over to national protection by the "privileges and immunities" clause of the Fourteenth Amendment.

The fundamental distinction thus elaborated between rights of citizens of the United States and those of citizens of the states, was further considered shortly after the decision of the *Slaughter House Cases* in *United States* v. *Cruikshank*, 92 U. S. 542, and the Court there held that the right of citizens to peaceably assemble together with each other and with other citizens of the United States was *not a right or privilege granted or secured by the Constitution or laws of the United States*, but merely a fundamental right theretofore existing and merely

further guaranteed against invasion by the states by the Fourteenth Amendment to the Constitution. The importance of this case to the point which the petitioners here make warrants a detailed consideration thereof. The subject matter of the suit was an indictment under 16 Stat. at L. 141 (Enforcement Act of May 31, 1870), which provided that "if two or more persons shall bind or conspire together * * * with intent to prevent or hinder his (any citizen's) free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States", the said conspiracy should constitute a penal offense punishable by the United States, and the particular indictment charged a conspiracy to interfere with the privilege of citizens of the United States peaceably to assemble together for peaceable purposes. As indicated, the Court held that the right of peaceable assembly was not a right "granted or secured by the Constitution or laws of the United States". The Court said, at page 554, that the due process clause of the Fourteenth Amendment—

> "* * * adds nothing to the rights of one citizen against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen * * *."
>
> "'Nor' said the Court 'did the equal protection clause of the Fourteenth Amendment add to the rights of the citizens of the States'."

The Court further said:

> "The only obligation resting upon the United States is to see that the States do not deny the right this Amendment guarantees, but nothing more."

A comparison of the language of the criminal statute involved in the *Cruikshank* case with that of Section 24 (14) will serve to indicate that the right of peaceable assembly is, *a fortiori*, not a right secured by the Constitution of the United States within Section 24 (14). As will be established more particularly hereinafter none of the other rights allegedly invaded by the petitioners in the present case fall within the purview of the privileges and immunities clause of the Fourteenth Amendment, but are, in every instance embraced either within the guarantees of Article IV, Sec. 2, or, as a result of judicial construction, within the clause of the Fourteenth Amendment involving the deprivation of "liberty" without due process of law, and, therefore, in the category of rights not "secured" by the United States Constitution, but merely guaranteed by the Fourteenth Amendment or by Article IV, Sec. 2 from state invasion. The *Cruikshank* case was specifically followed by the Supreme Court in *United States* v. *Wheeler*, 254 U. S. 281, in its construction of the word, "secured". This case is considered in detail hereinbelow.

The *Cruikshank* case was also followed by a great many decisions in the inferior courts, in one of which, *United States* v. *Lauges*, 48 F. 78 (writ of error dismissed in 144 U. S. 310), in denying that the conspiracy statute involved in the *Cruikshank* case protected the right to testify before a Federal Grand Jury without interference, the Court said (p. 87):

> "The giving and receiving of evidence as an essential and vital principle in the proceedings of all courts had been firmly established in English and American law long anterior to the adoption of the Constitution."

The first occasion that the Supreme Court had to apply the foregoing rules of differentiation of civil rights to a case in which the question of jurisdictional amount was involved, was in *Holt* v. *Indiana Manufacturing Co.*, 176 U. S. 68. In that case, the question directly considered was whether rights concededly not within the requisite jurisdictional amount in value, could be said to fall within the predecessor section to Judicial Code Section 24(14), where based upon a claimed deprivation of property without due process of law, in contravention of the Fourteenth Amendment. The Court flatly held that they could not, and there was held to be no federal jurisdiction.

The rule of the *Cruikshank* case, as particularly applied by the Supreme Court to the question of applicability of the 14th subdivision of Section 24 in the *Holt* case, has been consistently followed by the federal courts ever since.

In *Simpson* v. *Geary*, 204 F. 507 (D. C. Ariz. 1913), an action was brought by certain employees of a railroad requesting an injunction against the enforcement by the State of Arizona of a statute under which all flagmen employed by railroads were required to have been brakemen for a period of at least one year. The statute was claimed to constitute a deprivation of the plaintiffs' constitutional rights under the Federal Constitution. The jurisdictional minimum amount not being shown, it was nevertheless contended by the plaintiffs that the rights and privileges for whose deprivation the suit was brought came within the 14th exception to the requirement of such minimum in Section 24 of the Judicial Code, presently under consideration. The Court dismissed the contention and held that it had no jurisdiction.

under the authority of the *Holt* case. The Court said, at page 512:

> "The right to contract for and retain employment in a given occupation or calling is not a right secured by the Constitution of the United States, nor by any Constitution. It is primarily a natural right, and it is only when a state law regulating such employment discriminates arbitrarily against the equal right of some class of citizens of the United States, or some class of persons within its jurisdiction, as for example, on account of race or color, that the civil rights of such persons are invaded, and the Federal Constitution can be invoked to protect the individual in his employment or calling * * *"

All of the foregoing decisions were carefully analyzed by Judge Learned Hand in *Marcus Brown Holding Co.* v. *Pollak, supra,* and it was concluded by the Court that the word, "secured", as used in subdivision 14 of Judicial Code Section 24, must necessarily be accorded the connotation for which petitioners are presently contending, *i. e.,* that the reference is only to those rights which depend on the United States Constitution for their existence and not merely those in respect to which additional guaranties are afforded by the 14th Amendment. The controversy in the particular case involved an alleged deprivation of property without due process of law under the 14th Amendment. The amount in controversy was under $3,000 and the jurisdiction of the court depended upon whether the right in question could be said to fall within the classification of subdivision 14 of Judicial Code, Section 24. The Court said, page 141:

> "The plaintiffs' rights do not depend upon any law of the United States, and if subdivision

14 covers, it is by virtue of the fact that they are 'rights, privileges and immunities' 'secured' by the Constitution. Article 4, Sec. 2, had always secured to each citizen of each state the privileges and immunities of the citizens of the several states, and the second clause of the Fourteenth Amendment gave federal protection to the privileges and immunities of citizens of the United States. Just what those were the Supreme Court has been chary of saying. The right to pass freely over the whole country is apparently one. *Crandall* v. *Nevada*, 6 Wall. 36, 18 L. Ed. 745. Others are enumerated in the *Slaughter House Cases*, 16 Wall. 36, 79, 21 L. Ed. 394. Those cases, like the *Civil Rights Cases*, *supra*, hold that the general right of property does not have its origin in the Constitution and that the Fourteenth Amendment is not constitutive of them. It is in this sense that we understand subdivision 14 to use the word 'secure'. *Were it not so, all matters arising 'under the Constitution', as prescribed in subdivision 1, would be justiciable under subdivision 14, and the amount in controversy would never be a condition upon our jurisdiction, when a constitutional point was raised. This is certainly not the law.*" (Italics supplied.)

A recent decision applying the rule as outlined above, is *Gobitis* v. *Minersville School District*, 21 F. Supp. 581 (D. C. Pa. 1937), in which it was held, following *Hamilton* v. *University of California*, 293 U. S. 245, that the right of religious freedom was not a right "secured" by the Fourteenth Amendment to the Federal Constitution, but only guaranteed by that Amendment, within the "liberty" concept of the due process clause therein. Harking back to the fundamental distinctions raised in the *Slaughter House*

Cases, supra, the Court gave voice anew to the rule that the privileges and immunities protected by the Fourteenth Amendment are those that belong to citizens of the United States as such, as contrasted with those derived from other sources, and that the clear intent of subdivision 14 was limited to those rights strictly which fell within the privileges and immunities clause or other provisions of the Constitution proper.

The only expression in any case contrary to what is shown hereinabove to be the consistently applied understanding of the phrase, "rights, privileges and immunities secured", as used both in Section 24 (14) and in the criminal statute construed in the *Cruikshank* case, *supra,* is the case of *Smith* v. *United States,* 157 F. 721, 724, 725. In that case the court made the *obiter* statement that the word, "secured", in the conspiracy statute, meant, "protected", in its ordinary sense. The discussion contained in that case, however, was *a priori,* having no regard to the history and background of the concept, exemplified by the cases cited hereinabove in this subpoint. The definition given, furthermore, was not necessary to the decision. The right conspired against in that case was that of a colored citizen not to be subjected to involuntary servitude. Since that right was secured to colored persons by the 13th Amendment, in the sense of having been originally created thereby, the right was actually within the category of rights secured by the Federal Constitution, under the definition of the word "secured", shown hereinabove to be the true and authentic one.

Aside from the *Smith* case, respondents have utterly failed to meet the argument of the defendants as to the meaning of the phrase, "rights, privileges and

immunities *secured*, etc. * * *" in subsection (14). They have failed to cite a single case purporting to overrule *United States* v. *Cruikshank*, *Holt* v. *Indiana Manufacturing Company*, *United States* v. *Wheeler*, *Marcus Brown Holding Co.* v. *Pollak*, or *Gobitis* v. *Minersville School District*, all *supra*. They have done nothing more than to cite a number of lower federal court cases, in none of which, apparently, was there a thorough presentation by counsel of the argument made in this Point, nor any reference in the opinions of the courts to the authoritative decisions which we have cited bearing upon the meaning of the word "secured". Aside from those cases, the extent of the argument made by respondents is to invoke the dictionary for the meaning of the word, "secured", and to fall back upon uses of the word by the Supreme Court in cases where no problem concerning the meaning of subdivision 14 was raised. As amply demonstrated hereinabove, it is clear that the use of the word, "secured", in subdivision 14, is as a legal word of art. Resort at random to isolated instances of unadvised and casual use of the word in its ordinary grammatical meaning by the courts is obviously no aid to construction, and certainly ineffectual to overrule the *considered and settled* adjudication of the meaning of the word in the sense here immediately involved, and as here contended for by petitioners.

Respondents offer not an iota of authority in any way to affect the continued authenticity of the line of cases relied upon by petitioners. The cases they cite merely indicate that the privileges and immunities clause of the 14th Amendment, substantively considered, covers a broader and wider range of rights than was believed comprised therein at the time of the

Slaughter House Cases. See *e. g. Colgate* v. *Harvey*, 296 U. S. 404. In no respect, however, do they affect the fundamental thesis of that decision concerning the distinction between the privileges and immunities of United States citizens secured by the 14th Amendment, and such privileges and immunities as were always enjoyed by virtue of state citizenship. For this Court now to construe the word "secured", in its ordinary lay connotation, would be to nullify Section 24(1), with regard to the $3,000 requirement as to matters "arising under the Constitution and laws of the United States", and to make a completely unwarranted about-face on one of the most firmly established lines of decision in our jurisprudence. Petitioners respectfully submit that such a step, in the absence of legislation, is one which this Court should decline to take.

(2) Genesis and Nature of Rights Involved in this Case.

The law being as above indicated, it remains to consider specifically the genesis and nature of the rights allegedly involved in this case. First, there is the claimed right of peaceable assembly. This has been seen not to constitute a right secured by the Federal Constitution. *United States* v. *Cruikshank, supra;* and see *DeJonge* v. *Oregon, supra*, page 364, to the effect that:

> "* * * the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental."

Then there are the rights of free speech (it is here conceded for the sake of argument that this right is involved, although, as argued above, the right of free speech, *qua* free speech, properly considered, is not involved in this case), the right of free press (plac-

ards, leaflets and circulars), and the right of peaceful picketing. This latter right is merely a combination of the rights of free speech and of free press. *Senn* v. *Tile Layers Protective Union,* 301 U. S. 468. Insofar as the foregoing rights are concerned, therefore, the question narrows down to the origin of the fundamental rights of free speech and of free press. It is established beyond doubt that:

> "* * * the rights of free speech and a free press were, as already said, attributes of National citizenship before the Fourteenth Amendment was made a part of the Constitution." *Patterson* v. *Colorado,* 205 U. S. 454, 464 (dissenting opinion).

The right of free speech was one of those fundamental rights brought into the American Colonies from England and antedated the adoption of the Federal Constitution. 4 *Blackstone's Commentaries,* 151. 152; 4 *Madison's Works,* page 543; *Report on the Virginia Resolutions.* The only express mention of the rights of free speech and of free press in the Federal Constitution occurs in the First Amendment and that reference is, of course, only applicable as a restriction upon the Federal Congress. The very reference to "the freedom of speech, or of the press;", in the First Amendment to the Constitution, as inviolable by the Congress, indicates that they were rights theretofore existent in the states. This conclusion is fortified by the historical fact that several of the states insisted upon the immediate adoption of the first ten amendments as a condition to their adherence to the Constitution. They desired absolute assurance that these rights, which they had always enjoyed in the states, would be kept inviolate by the new federal government. As seen above, the Supreme Court of the United States, in *DeJonge* v. *Oregon,*

supra, at page 364, considered the right involved in that case as a combination of the rights of peaceable assembly and of free speech, and applied to that combination of rights the statement of the Supreme Court in *United States* v. *Cruikshank, supra* (at p. 552), to the effect that:

> "* * * The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."

The Court in the *DeJonge* case went on to say that the right involved was one of the fundamental liberties, at the base of all civil and political institutions, and was embodied in the due process clause of the Fourteenth Amendment. It would be as sensible for respondents to contend that the right of personal liberty secured by the Fourteenth Amendment did not exist in the states prior to the adoption of the Constitution, as to say that the adjudicated constituents of that right, to wit, freedom of speech, of press, and of assembly, did not exist in the states prior to and independent of the Federal Constitution. As indicated hereinabove, a claim for redress of the deprivation of the rights presently in question, arises under the Constitution of the United States only by virtue of the due process clause and, as held in *Holt* v. *Indiana Mfg. Co., supra,* rights dependent upon the due process clause are not such rights as are secured by the Constitution within the meaning of subdivision 14. Nor, of course, is there any basis for distinguishing between rights protected under the "liberty" concept and those covered by the "property" concept of that clause, so far as the issue of origin prior to the Federal Constitution is concerned.

The other rights with respect to which respondents claim to be aggrieved, and in reference to which an injunction was granted below, are those of freedom from unreasonable searches and seizures, from physical molestation or detention unless in pursuance of a lawful arrest accompanied by immediate arraignment, and of forcible removal or "deportation" from one state to another. So far as the Federal Constitution is concerned, it is elementary that the first two of the rights enumerated are protected by that instrument only against invasion by Congress, under the several Amendments. So far as unlawful acts in these respects by State officers are concerned, the remedies are solely and exclusively a matter of state action.

With regard to the attempt to base jurisdiction under Section 24 (14), upon the claimed "deportations" of members of the respondent organization to New York from Jersey City, as constituting deprivations of rights, privileges or immunities of United States citizens, it will suffice to say that this Court has held that the right to be immune from such deportation is *not a privilege or immunity secured to a United States citizen,* within the conspiracy statute construed by the Court in *United States* v. *Cruikshank, supra.* We refer to *United States* v. *Wheeler,* 254 U. S. 281, aff'g 254 F. 611. Of course, *state* action of the nature complained of might call for federal protection within Article IV, Section 2 of the Federal Constitution, as constituting a denial to citizens of other states of rights and privileges of citizens of New Jersey, 254 U. S. at 299; *United States* v. *Harris,* 106 U. S. 629, 645. But that consideration does not impugn the fundamental holding of the *Wheeler* case, to the effect that forcible transportation of United States citizens against their will

from one state to another is not the deprivation of a right, privilege or immunity of a United States citizen in the properly understood sense of the phrase, *i. e.*, a right created in the first instance by, and dependent for its existence at all upon the United States Constitution. As to the obvious fact that the acts of petitioners complained of in this regard are not the result of a statute, law, custom, ordinance or usage, etc. of a *state*, and for that *additional* reason not to be subsumed under the jurisdictional aegis of Section 24 (14), *vide infra*, subpoint (1).

Respondents attempted below to labor the strained thesis that another right was involved, to wit, the right of the respondent organizations and individual organizers to pursue their profession of labor organization. It has been seen from the Statement of Case hereinabove, that petitioners neither intended nor purported to interfere in any way with the professional activities of the respondents as such, and that the efforts of petitioners were at all times directed solely and exclusively to the preservation of public order in the City of Jersey City. It is also apparent without extended discussion that the incidental hobbling of some of the phases of the activities of the respondents, caused by the acts of petitioners complained of, was in no sense a prevention of the exercise of their professions, generally, by the respondent labor organizers; but even if everything that respondents contend as to the purposes of petitioners is taken at its face value, it has nevertheless been repeatedly affirmed that the right to follow a vocation, or to retain and exercise an employment in a given occupation are not rights secured by the Constitution of the United States. *United States* v. *Cruikshank, supra*; *Simpson* v. *Geary, supra*. And of persuasive importance in this connection is the

specific holding, in *United States* v. *Moore,* 129 Fed. 630, that the right of a citizen to organize miners, artisans, laborers, or persons in any pursuit, as well as the right of individuals in such callings to unite for their own improvement or advancement, or for any other lawful purpose, is not a right, privilege or immunity granted or secured by the United States Constitution, but is a fundamental right of a citizen in all free governments, and therefore within the protection of the states.

The conclusion to which one is inescapably driven, that the rights involved in the present case are, in every instance, genetic in the states and not in the federal Constitution, is fortified by a consideration of the purpose which Subdivision 14 of the Judicial Code, Section 24, was designed to accomplish. As will be more specifically developed in the next subpoint herein, the said subdivision was identical in origin with the Enforcement Act of 1870, passed by Congress to implement the newly adopted clause of the Fourteenth Amendment, which provided that:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States."

The reference to rights, privileges and immunities secured by the Constitution and by the laws of the United States providing for equal protection of citizens and persons within the jurisdiction of the United States, in Section 24 (14), is thus clearly seen to have been designed to allow original jurisdiction to the Federal District Courts, untrammeled by requisites of minimum jurisdictional amount, *in*

cases of claimed deprivation of these newly established and newly created rights, and with respect to them only.

(d) The rights involved in this case are in no instance secured by any law of the United States providing for equal rights of citizens of the United States or of all persons within the jurisdiction of the United States, and therefore no such law brings them within the alternative provisions of the Fourteenth subdivision of Judicial Code, Section 24.

Respondents contend that if they cannot come within the jurisdiction purview of subdivision 14 as claiming the deprivation of rights "secured" by the Constitution of the United States, they, nevertheless, fall within that section as claiming redress of the deprivation of rights secured by "laws of the United States". The mere statement of this proposition reveals its speciousness. Subdivision 14 does not deal with deprivations of rights secured by *any laws of the United States,* but only of rights,

> "secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Respondents cite two laws of the United States with respect to which it is claimed a deprivation of their rights occurred. The first of these laws, or more properly speaking, group of laws, consists of those enactments commonly known as the Civil Rights Laws, originally enacted in the period 1866-1871, designed to constitute the mechanics of enforcement of the newly created rights of the negroes, won for them in the Civil War, and established as a part of the law of the land in the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of

the United States. These laws are now embodied in R. S. Secs. 2004, 1977, 1978, 1979, 18 Stat. 336, 337. R. S. Secs. 1980, 1981, 1982, 1983, 1984, 1985, 5517, 1986, 1987, 1988, 1989, 1990, and for convenience of reference, to be found in Title 8, U. S. C., Sections 31, and 41 to 56 inclusive. All of these rights revolve about Section 43 and it is that section that is primarily relied upon by the respondents. It reads as follows:

> "Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State, or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

A close examination of this section indicates that its language is almost identical in phraseology with that of Section 41(14) of Judicial Code Section 24, providing, as above indicated, for one of the classifications excepted from the requirement of a jurisdictional minimum in controversy. As a matter of fact, these sections are in *pari casu*, both having derived from the original Enforcement Act of April 20, 1871, entitled "An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States and for other Purposes". 17 Stat. at L. 13, ch. 22. See *Holt* v. *Indiana Mfg. Co.*, *supra*, at page 72. Known from the beginning as the "Civil Rights Laws", the only purpose of Congress in enacting them was, as has hereinabove been shown, for the protection of citizens of the United States in

the enjoyment of certain rights, without discrimination on account of race, color or previous condition of servitude. *United States* v. *Cruikshank*, *supra*, at page 555.

Despite the fact that these laws were later amended and revised in unimportant particulars, they were never broadened to cover a wider range of rights than those specified in Judicial Code, Section 24(14). Today they include not only the rights of negroes, but also, for example, those of aliens discriminated against by state laws, as was the case in *Truax* v. *Raich*, *supra*.

It follows, therefore, that all of the rights and privileges based or founded upon the Civil Rights Laws are subject to the identical rules of construction and interpretation laid down by the Courts, and hereinabove detailed at length with respect to Section 24(14). The rights and grievances involved in the present proceeding, not being "secured" by the Constitution of the United States, within the judicially construed limitations of the latter section, are likewise not "secured" by its substantive counterpart, to wit, Section 43 and the related sections of Title 8, U. S. C.

Nor may the proper bounds of jurisdiction be enlarged by the reference in Section 43 of Title 8, "Constitution and Laws". The words, "and laws", must be considered as confined in intent to laws having to do with the equal rights of citizens and inhabitants of the United States, as specifically provided in Judicial Code, Section 24(14), under the rule of statutory interpretation of statutes in *pari casu*. In any event, they cannot enlarge the force and effect of Judicial Code, Section 24(14), as an excepting provision of the requirement of jurisdictional amount laid down in Section 24(1), Section

24 being the exclusive repository of provisions for the vesting of original jurisdiction in the United States district courts. Consequently, any rights which respondents may be found to have under any law of the United States *not* concerned with, "providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States", must depend for original federal jurisdiction upon Judicial Code, Section 24(1), as being rights "arising under the Constitution or laws of the United States", and, in that event, the three thousand dollar jurisdictional minimum must be established.

Respondents' reliance upon the National Labor Relations Act is subject to the observations hereinabove made. This act is quite definitely not a law purporting to provide for "equal rights of citizens of the United States or of all persons within the jurisdiction of the United States". It is, therefore, not one of those laws in connection with which, under subdivision 14, there need be no showing of the jurisdictional minimum. It should further be noted that the class of persons in favor of which Section 24(14) allows federal jurisdiction without a showing of minimum jurisdictional amount, consists only of those persons whose rights under the law in question were affected, not those of other persons or organizations sympathetic with them, or engaged in activities designed to promote their interests. The class of persons for whose benefit the National Labor Relations Act was enacted is constituted of workers in industry. With particular application to the present controversy, that classification would be limited to workers in industry in the City of Jersey City. *No such worker was a party plaintiff in this case.* Respondents' reliance upon the Wagner Act, therefore, is for this reason, if for no other, entirely inapposite.

(e) There is no jurisdiction in this case founded upon Judicial Code, Section 24(12).

Respondents have also claimed below to rely for jurisdiction upon the 12th subdivision of Judicial Code, Sec. 24, providing for jurisdiction without regard to jurisdictional minimum, in cases of actions brought for the recovery of damages on account of any injury to person or property, or for the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in R. S. Sec. 1980 (Section 47 of Title 8, U. S. C.).

Section 24(12) concerns actions authorized by law to be maintained for the,

> "* * * recovery of damages on account of * * * the deprivation of *any right or privilege of a citizen of the United States* by any act done in furtherance of any conspiracy mentioned in Section 47 of Title 8."

R. S. Sec. 1980 (Sec. 47 of Title 8) allows an action for damages in the event that,

> "* * * two or more persons in any state or territory conspire or go in disguise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly,"

any person of equal protection of the laws or of equal privileges or immunities under the laws;

> "* * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such a conspiracy, whereby another is injured * * * or deprived of having and exercising *any right or privilege of a citizen of*

the United States, the party so injured or deprived may have an action for the recovery of damages. * * *." (Italics supplied.)

Note that the italicized portion of the last clause qualifies the entire section. Since, as has been frequently reiterated by petitioners, no rights or privileges of citizens of the United States, as such, are involved in this case, subdivision 12 does not support the jurisdiction of the District Court any more than does subdivision 14.

The principal answer to the contention of the respondents, however, is that subdivision 12, by its very language, is limited to actions at law for damages. It cannot be said that this language is merely accidental, since, in subdivision 14, the language used is, "all suits at law *or in equity*". If Congress intended suits in equity to come within subdivision 12, they would have said so, just as they did in subdivision 14. And furthermore, it is a cardinal rule of construction of statutes vesting jurisdiction of subject matter in particular courts, that such statutes must be strictly construed. It cannot be contended that since an action at law would lie under subdivision 12, a suit in equity is permissible, under the general rule that an equity court will take jurisdiction to prevent the deprivation of rights for which there is no adequate remedy at law. Although the principle mentioned is a general equity principle, it obviously has no application to a situation where the right to an action at law is jurisdictional in the court where brought.

(f) The equal protection clause of the Fourteenth Amendment constitutes no basis for jurisdiction under subdivision 14.

Does the third clause of Section 1 of the Fourteenth Amendment, providing that no state shall deny to

persons within its jurisdiction the equal protection of the laws, create any new rights as distinguished from those in existence prior to the adoption of the Constitution, so as to constitute new rights, privileges and immunities secured, in the sense of created by, the Federal Constitution?

The answer to this question has been removed from the domain of speculation by the Supreme Court in *United States* v. *Cruikshank, supra.* In that case, the question involved was the penal statute punishing conspiracies designed to deprive a citizen of the United States of, "a privilege granted or secured to him by the Constitution or laws of the United States". (See *supra,* subpoint (c).). The indictment in that case charged such a conspiracy in that the defendants had conspired, among other things, to deprive the injured parties of "the equal protection of the laws". The Supreme Court said, page 549:

> "* * * To bring this case under the operation of the Statute, therefore, it must appear that the right, the enjoyment of which the conspirators intended to hinder or prevent, was one granted or secured by the Constitution or laws of the United States."

And at page 554:

> "The 14th Amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not * * * add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. *That duty was originally as-*

> *sumed by the States; and it still remains there.* The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guarantees, but no more." (Italics supplied.)

The language above quoted is Chief Justice Waite's.

In the Circuit Court, the opinion written by Justice Bradley, 1 Woods, 308, 314-316, said:

> "When any of these rights and privileges are secured in the Constitution of the United States only by a declaration that the State or the United States shall not violate or abridge them, *it is at once understood that they are not created or conferred by the Constitution,* but that the Constitution only guarantees that they shall not be impaired by the State, or the United States, as the case may be. The fulfillment of this guaranty by the United States is the only duty with which that government is charged * * *." (Italics supplied.)

Justice Bradley's language was cited with approval by Justice Gray, for the United States Supreme Court in *Logan* v. *United States,* 144 U. S. 263. In *Holt* v. *Indiana Mfg. Co., supra;* the Supreme Court reiterated its holding in the *Cruikshank* case and went so far as to say (at p. 72), with specific reference to the predecessor section to subdivision 14, that it did not include actions for the deprivation of rights based upon the equal protection clause of the Fourteenth Amendment.

The holding of the *Cruikshank* case has been aptly paraphrased by the Supreme Court of Maine in *State* v. *Leavitt,* 105 Me. 76, 83, as follows:

> "* * * the equality clause in the fourteenth amendment did not *create* any new or substantive

legal rights, or add to enlarge the general classification of rights of persons or things existing in any state under the laws thereof. It operated upon them as it found them established, and it declared in substance, that such as they were in each state they should be held and enjoyed alike by all persons within its jurisdiction. *Minor* v. *Happersett*, 21 Wall. 162 (22 L. Ed. 627); *U. S.* v. *Cruikshank*, 92 U. S. 542." (Italics supplied.)

The language of the *Leavitt* case has been borrowed as representing a true statement of the law on the significance of the equal protection clause, in 12 *American Jurisprudence* 132.

Respondents rely for support of their argument on equal protection, on *Truax* v. *Raich*, 239 U. S. 33. Our answer to that citation is, as has been observed above in another connection, that the reference to jurisdiction by the District Court in that case was entirely gratuitous and unnecessary, since pecuniary rights were involved, and since the matter arose on a motion by the defendants to dismiss the Bill of Complaint on four grounds *only*, which were as follows: (1) the action was a suit against the State of Arizona without its consent; (2) the bill sought an injunction against the enforcement of a criminal statute; (3) the bill did not state facts sufficient to constitute a cause of action in equity; and (4) improper joinder of parties. On the appeal to the Supreme Court, the Court described the question before it as being dependent upon the grounds urged in the motion to dismiss, and said as follows, page 42:

"The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount

to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practicable result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the states as chose to offer hospitality."

The Court at no point in its opinion adverted to any question of jurisdiction. A reading of the case indicates, however, that there actually could be said to have been jurisdiction under Judicial Code, Section 24(14), *because of the deprivation of rights of aliens under a law of the United States providing for equal rights of persons within the jurisdiction of the United States;* that since the state law was tantamount to a deprivation of the right of aliens to earn a living on an equal basis with citizens, they *were* being deprived of rights covered by subdivision 14. The case was so understood by Judge Learned Hand in *Marcus Brown Holding Co.* v. *Pollak, supra,* and he concluded that the Supreme Court in nowise meant to overrule *Holt* v. *Indiana Mfg. Co., supra,* as to the scope of subdivision 14. In any event, however, the distinction between rights and privileges of United States citizens as such, and those depending upon the equal protection clause, was definitely determined by the unambiguous and positive holding of the Supreme Court in the *Cruikshank* case, *supra.*

(g) Article IV, Section 2, of the United States Constitution does not create a basis for jurisdiction under subdivision 14.

Article IV, Section 2, provides that "the citizens of each State shall be entitled to all Privileges and

Immunities of Citizens in the several States". There is authority directly in point establishing that this provision, like the others hereinabove considered, created no new privileges and immunities of citizens of the United States under the Constitution. The privileges and immunities referred to were defined in *Corfield* v. *Coryell*, 4 Wash., (Circuit Court U. S.) 371, 380, as:

> "* * * those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have at all times been enjoyed by the citizens of the several states which compose this union."

In the *Slaughter House Cases*, 16 Wall. 36, 77, the Court said, with reference to Article IV, Section 2:

> "The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the states."

As explained by the Court, it merely extended these formerly existing privileges and immunities to citizens of each of the states throughout all of the United States. It no more created rights than did the equal protection clause discussed in the subpoint next above. In both cases, merely new *relationships* were created as to existing *old* privileges and immunities *of citizens of states.*

Furthermore, as pointed out in the *Slaughter House Cases*, the substance of Article IV, Section 2, *had been* theretofore established and created in the Fourth Article of the Articles of Confederation adopted prior to the adoption of the Federal Constitution, which provided that:

> "* * * the free inhabitants of each of these

states * * * shall be entitled to all the privileges and immunities of free citizens of the several states."

These conclusions are definitely affirmed and applied in the United States Supreme Court case of *United States* v. *Wheeler, supra*, discussed hereinabove, in subpoint (c).

It is therefore clear, under the rule as phrased in *Hamilton* v. *University of California, supra,* and as applied prior thereto by Judge Hand, in the *Marcus Brown Holding Co.* case, *supra,* and later by Judge Maris in the *Gobitis* case, *supra,* that such rights as may be said to flow from Article IV, Section 2, do not "arise from the Constitution and laws of the United States as contrasted with those that spring from other sources".

(h) The alleged deprivation of the "privilege", under the Fourteenth Amendment, of passing freely from state to state does not base jurisdiction under subdivision 14.

Petitioners claim that some supposed removal of persons by the petitioners from out of the city and state constitutes a violation of that particular one of the privileges and immunities of citizens of the United States which is concerned in the right to pass freely from state to state. *Crandall* v. *Nevada,* 6 Wall. 36.

It is a complete answer to this attempt to base jurisdiction that, so far as the corporate respondents are concerned, the removal of their agents and employees who were not plaintiffs in this suit, infringes no privilege or immunity of a citizen of the United States, since a corporation has none, *Selover, Bates & Co.* v. *Walsh,* 226 U. S. 112; *Paul* v. *Virginia,* 75

U. S. 168; *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557, and cannot derive any from individuals associated or connected with it, *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28, 45, and that, *so far as the individual respondents are concerned*, there is absolutely no proof in the record that any one of them was removed from out of the state.

It might be further noted that, although the *Crandall* case, *supra*, fixes the right of ingress and egress from states as an attribute of national citizenship, the right is not *peculiarly* such, since the right of ingress and egress from the states was always an attribute of state citizenship, and nothing has taken place to affect that principle. That this is so, as a matter of law, is fixed beyond any possibility of further debate by the decision of this court in *United States* v. *Wheeler*, *supra*, discussed at length hereinabove in subpoint (c). In that case, the Supreme Court referred to the reference in *Slaughter House Cases*, *supra*, at page 75, to the effect that the Fourth Article of the Articles of Confederation had enumerated as among the specific privileges and immunities of *citizens of the states*, that:

> "* * * the people of each state shall have free ingress and regress to and from any other state, * * *."

The Court in the *Slaughter House Cases* said, page 75:

> "There can be but little question that the purpose of both these provisions (*i. e.*, the 4th Article of the Articles of Confederation and Article IV, Section 2, of the Constitution) is the same, and that the privileges and immunities intended are the same in each. In the Article of Confedera-

tion we have some of these specifically mentioned, and enough, perhaps, to give some general idea of the class of civil rights meant by the phrase."

The right of free passage to and from the states is accordingly seen to be one more of the rights antecedent to the Constitution in origin and not dependent upon it for existence. The most that can be said is that the right is concurrently protected by both federal and state citizenship. In that view, the right not deriving from the Federal Constitution *peculiarly or exclusively,* no jurisdiction for an action to redress its deprivation in the District Courts can be based upon subdivision 14, authoritatively considered. *United States* v. *Wheeler, supra.*

We respectfully offer the further observation that the ejection of a person from a state because of his engaging in unlawful activities therein can hardly be said to be an abridgment of his right to pass into, from, or through the state. It is, if anything, a denial to him of the free pursuit of liberty, and perhaps of property, without due process of law, and that only. With respect to such rights, as hereinabove seen, no original jurisdiction can be founded on subdivision 14.

(i) Attempt to base jurisdiction on the Interstate Commerce Clause of the Federal Constitution, within subdivision 14.

The Interstate Commerce Clause, Article I, Section 8, Federal Constitution, gives Congress the right to regulate commerce among the several states. It obviously gives citizens no privileges or immunities as United States citizens, under subdivision 14. If respondents intend by the above citation to refer to the Interstate Commerce Act, subdivision 14 is again inapplicable since, so far as United States laws are

concerned, it deals only with rights, etc., secured by *any law of the United States providing for equal rights of citizens and persons within the jurisdiction of the United States.* It needs no extended argument to demonstrate that the Interstate Commerce Act is not within the purview of subdivision 14.

(j) So far as those respondents which are artificial entities are concerned, they have no constitutional rights, either under the "liberty" concept of the due process clause, or under the "privileges and immunities" clause of the Fourteenth Amendment, and there was therefore no jurisdiction below to enter decrees in their favor on account of the particular charges made by them, under any section of the judicial code.

Included among the parties-respondent in this case are the Committee for Industrial Organization, Steel Workers' Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, and American Civil Liberties Union. These are all in the nature of membership corporations or unincorporated associations and are artificial entities.

In *Selover, Bates & Co.* v. *Walsh, supra,* it was stated, at page 126:

> "* * * it is well settled that a corporation cannot claim the protection of the clause of the Fourteenth Amendment which secures the privileges and immunities of citizens of the United States against abridgement or impairment by the law of a state."

See also *Paul* v. *Virginia* and *Orient Insurance Co.* v. *Daggs,* both *supra.*

In *Western Turf Association* v. *Greenberg,* 204 U. S. 359, the Supreme Court held that a corporation possessed no constitutional rights under that

clause of the Fourteenth Amendment protecting citizens against deprivation of their liberty without due process of law.

Nor are the cases relied upon by respondents to the contrary of this subpoint. *International News Service* v. *Associated Press*, 248 U. S. 215, did not deal with the possession by corporations of constitutional rights under either the liberty concept or the privileges and immunities clause of the Fourteenth Amendment. The corporate rights involved in that case were property rights and the constitutional basis for their protection lay under the property concept of the due process clause. The question of jurisdiction was, furthermore, not raised by the answer in that case, nor properly presented by the appeal. See *Kvos* v. *Associated Press*, 299 U. S. 269, 279. The case is therefore entirely irrelevant to the point presently urged by petitioners, which concerns only the status of corporations as parties entitled to claim the jurisdictional protection of Judicial Code, Section 24(14). The Court appears to have been concerned in the *International News Service* case only with the status of the plaintiff as a proper plaintiff from the procedural standpoint. These observations are equally applicable to the respondents' citation of *United Mine Workers of America* v. *Coronado Mining Co.*, 259 U. S. 344, except that the question there raised was with respect to a corporate party defendant.

It appears, accordingly, that whether the rights of the respondents are subject to predication upon the privileges and immunities clause of the Fourteenth Amendment or upon the due process clause (and as petitioners have shown hereinabove, the latter is the true source of respondents' rights, if

any), the corporate respondents do not enjoy the jurisdictional privilege of maintaining this action without a showing of the $3000 minimum; nor, indeed, at all, having no rights susceptible of invasion on any facts predicated in this case. To the extent that the decree of the court below runs in favor of said respondents, it must therefore be reversed and remanded. *Geneva Furniture Mfg. Co.* v. *S. Karpen & Bros.*, 238 U. S. 254.

(k) No case is made for jurisdiction under Judicial Code, Section 41(14) as to the individual respondents herein, since they never made any application for permits to speak or meet under the 1930 ordinance and therefore cannot be said to have suffered a deprivation thereunder.

None of the individuals who are respondents have shown any such interest in the controversy with respect to the 1930 ordinance regulating street meetings, as to entitle them to raise the question. There is no allegation in the complaint, and respondents have given no proof to indicate, that any one of them ever made any attempt, either to secure a permit from the city officials, or to hold a meeting on the public streets at which they would address an assemblage. None ever acted under the ordinance or in violation thereof. It has been frequently held that a party seeking to raise a question of constitutionality must show not only that a statute or ordinance is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with the public generally. *Massachusetts* v. *Mellon*, 262 U. S. 447; *Ohio Custom Garment Co.* v. *Lind*, 13 F. Supp. 533. Although respondents Macri and Carney were named as speakers in the application of the C.I.O., they themselves made

no application for a permit and made no attempt to speak without one. The other individual respondents were neither named in an application nor made any application themselves and they clearly have no interest in raising any constitutional questions which may be involved in a construction and application of the 1930 ordinance.

(1) Judicial Code, Section 24(14) deals with deprivation of certain rights under color of a statute, law, ordinance, etc. of any "State". Certain of the grievances urged by respondents were not imputable to the State of New Jersey, and do not therefore found a proper basis for the decree, to the extent that it deals with those grievances. For the same reasons, no jurisdiction can be predicated under Judicial Code, Section 24(1), dealing with controversies arising under the Constitution and laws of the United States, respondents having no substantive right to relief, to the extent that their grievances are based upon deprivations under the Fourteenth Amendment, since that Amendment is likewise limited to State action.

The bill of complaint herein is bare of any allegation that the State of New Jersey was responsible for any of the several acts complained of, or that the petitioners, in taking the steps enumerated in the bill, acted as agents of or under the authority of the State of New Jersey. It has been recently held in a similar instance that no basis for jurisdiction is predicated within Judicial Code, Section 24(14). In *Jones v. Oklahoma City*, 78 F. (2d) 860 (C. C. A. 10th, 1935), a bill was filed to enjoin the enforcement of a municipal ordinance segregating negroes and whites in separate residential districts. The bill alleged that the enforcement of the ordinance by the arrest and conviction of the plaintiffs, deprived them of their property rights and immunities and privileges, without due process of law and without the equal protection of the law, in contravention of the Fourteenth Amendment and the civil rights laws. The bill was

dismissed by the District Court for lack of jurisdiction within Judicial Code, Section 24(14). The Court said, page 861:

> "It (the bill) does not allege that the ordinance was passed and adopted by state authority or that it has been or will be enforced by any State officer, nor does it allege that the state has conferred authority or color of authority on any State officer to enforce the ordinance. * * * there is no allegation of State action in authorizing adoption of the ordinance or its enforcement.—legislative, judicial or executive."

These observations of the Tenth Circuit Court of Appeals are directly applicable to the bill of complaint filed in this cause.

In *United Mine Workers of America* v. *Chafin*, 286 F. 959 (D. C., W. Va. 1923) an action was brought to enjoin a county sheriff and his deputies from interfering with, intimidating or molesting members of the United Mine Workers of America, it being alleged that the defendants were guilty of interfering with and breaking up the efforts of the plaintiffs to organize the mine workers of a particular locality. The Court dismissed the bill for the reason that the right to relief was predicated upon a violation of the Fourteenth Amendment, which Amendment dealt only with the prohibition of acts by states, whereas in the case before the Court the acts involved were those of individuals acting entirely beyond the confines of any authority granted them by the state. The court expressly distinguished the situation before it from that involved in *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278. That case involved the question whether a municipal ordinance fixing telephone rates, *under the express authority of a state statute*

authorizing the municipality to fix such rates, could, if confiscatory, be deemed an act of the state and thereby warrant an application of the due process clause of the Fourteenth Amendment. The Court held that it could. It held nothing more. Any observations indulged in by the Court, not necessary to the decision of the question as particularly circumscribed by the facts before it, is *dictum,* not presently controlling, particularly in view of inconsistent statements by the Court in other cases. A properly qualified statement of the rule, petitioners respectfully submit, is that made in the recent case of *Lovell* v. *City of Griffin, supra,* at page 450:

> "* * * municipal ordinances *adopted under state authority* constitute state action and are within the prohibition of the Amendment." (Italics supplied.)

The true confines of the Fourteenth Amendment, so far as unauthorized action by executive officers is concerned, was early stated by the Court in the case of *Virginia* v. *Rives,* 100 U. S. 313. The Court said, at page 334:

> "The inhibition (of the 14th Amendment) is in effect against passing and enforcing any laws which are designed to accomplish the ends forbidden. If an executive or judicial officer exercises power with which he is not invested by law, and does unauthorized acts, the State is not responsible for them."

In the light of this analysis as to what types of prohibited action are properly imputable to the states, and what types are not, it remains to consider some of the specific grievances claimed by the respondents in the present case.

Peaceful Picketing. Respondents have taken the position that the interference by the Jersey City police and by the petitioners generally with the right of the respondents to indulge in peaceful picketing was entirely without any justification whatsoever, either in municipal ordinances, state statute, or otherwise (R., Vol. III, pp. 1368-1369). If that is so, then respondents have amply and without possibility of contraversion established that the acts of the petitioners with respect to peaceful picketing were utterly without color of state authority and that therefore the action complained of is not imputable to the state, either under Judicial Code, Section 24 (14) or under the Fourteenth Amendment generally.

Prohibition of Street Meetings and Assemblies. In the respondents' bill of complaint it is charged, with reference to the refusal of the petitioner Casey to issue permits for street meetings upon the application of certain of the respondents, that the permits were denied, not in any bona fide application of the ordinance of Jersey City with respect thereto, but solely and purely in furtherance of an alleged fraudulent and unlawful conspiracy entered into by the individual petitioners to deprive the respondents or any of them of the right to hold street meetings under any circumstances, purely by reason of the social, economic, and political views entertained and espoused by the respondents. Fairly construed, these charges by the respondents are not tantamount to an accusation that the petitioners have denied the claimed rights of the respondents under color of any ordinance or statute. They are, to the contrary, more accurately to be characterized as charges that the petitioners, on their own initiative as individuals, arrogated to them-

selves the right to exclude from the use of the streets persons distasteful to themselves personally, entirely apart from any ordinance. Again, petitioners respectfully contend, the nature of the charge removes it from the category of grievances against state action, either direct or imputable.

Prohibition of the Use of Placards. It is true that the prohibition by the petitioners of the use of placards is founded upon a municipal ordinance. There is nothing, however, in the bill of complaint or anywhere else in the record, indicating the slightest basis in state legislation for the enactment or the administration by the petitioners of the ordinance in question. Yet again, therefore, a charge is made which is not equivalent to a charge of action by the state.

Petitioners maintain, therefore, that with respect to the charges made by the respondents in each of the instances hereinabove noted under this subpoint, no proper basis is laid for the exercise of jurisdiction by this Court under Judicial Code, Section 24(14), and that, therefore, those parts of the decree of the court below based upon the particular charges discussed herein, were without any jurisdictional basis for their entertainment by the District Court.

(m) The decree must be reversed if there was a failure of jurisdiction as to any of the separate causes of action set forth in the Bill, for any of the reasons hereinabove specified.

Petitioners have established hereinabove that there was a failure of jurisdiction in the District Court under Judicial Code, Section 24(1), by reason of the fact that there was no sufficient showing that the matters in controversy exceeded the value of $3,000. If this Court agrees, the judgment below must be reversed, unless a proper alternative case

for jurisdiction has been established by respondents under Judicial Code, Section 24(14). Petitioners have undertaken in this Point to indicate a number of reasons why no jurisdiction may be founded under that subdivision with respect to any of the causes of action alleged. With respect to some of them, furthermore, it has been shown that there is no proper basis for jurisdiction because those particular charges are not imputable to the State of New Jersey, and with respect to most of the charges, it has been shown there was no jurisdiction so far as the corporate respondents are concerned. If this court agrees with one or more of the contentions thus made by petitioners, and not with others, it must nevertheless reverse the judgment below and remand the cause so that those portions of the decree based upon the particular charges, or in favor of the particular parties, with respect to which the Court shall find that there was no jurisdiction in the District Court, may be eliminated from the injunctive provisions of the decree.

Such a step would be dictated by the decision of the Supreme Court in the case of *Geneva Furniture Manufacturing Co.* v. *S. Karpen & Brothers,* 238 U. S. 254. In that case a bill in equity was filed alleging, (1), a cause of action against the defendants for infringement of patents owned by the plaintiffs, and (2), other causes based upon a breach by the defendants of contractual obligations arising in connection with the patents. One of the defendants was a West Virginia corporation, the plaintiff a New York corporation, and the action was instituted in the Northern District of Illinois, where certain of the other corporate defendants had their headquarters. The lower courts dismissed for lack of jurisdiction on the grounds that the first cause of action was not

actually a suit for patent infringement and for the further reason that the District Court acquired no jurisdiction of the West Virginia corporate defendant, since it had not waived its jurisdictional right to be sued either in the district of the residence of the plaintiff or where it was itself domiciled. The judgment was reversed by the Supreme Court on the ground that the first cause of action, properly considered, did constitute a patent infringement suit under the laws of the United States, but so far as the part of the bill addressed to the West Virginia corporation defendant was concerned, the Court held, page 259:

> "* * * no federal court can take jurisdiction of a suit against the West Virginia corporation without its consent, save in the district of its residence or that of the plaintiff, and it hardly needs statement that *the jurisdiction as limited and fixed by Congress cannot be enlarged or extended by uniting in a single suit causes of action of which the court is without jurisdiction, with one of which it has jurisdiction.* Upon this point the rule otherwise prevailing respecting the joinder of causes in action in suits in equity must, of course, yield to the jurisdiction statute." (Italics supplied.)

If, moreover, this Court finds that the jurisdictional minimum has been established as to the causes of action based upon unlawful restraint and confinement, it may not, *ergo,* justify a retention by the district court of jurisdiction as to those causes of action where no showing of the requisite jurisdictional amount was made or is possible. It is important to note, that although the bill of complaint sets out a jumbled and undifferentiated recital of rights

claimed to have been violated, it clearly appears that the purported causes of action based upon the right of assembly and speech in the public streets are predicated upon sets of facts and rights flowing therefrom, distinctly separate and different from those based upon physical molestation, restraint, and confinement (conceding, for the sake of argument, that the bill does state the latter). Detentions took place in connection with distribution of circulars. No respondent in this case was confined in connection with public assemblies. And even if there were any such instance, the *cause of action* for the restraint is distinct from the *cause of action,* if any, involved in the claimed right to speak and assemble in public places.

Hurn v. *Oursler,* 289 U. S. 238, 246, is in direct support of the argument presently urged by petitioners. That case settled the rule of the United States Supreme Court to the effect that where separate causes of action, involving separate fundamental rights, based upon different facts, are joined in one suit, and where, in such case, the District Court has jurisdiction *over only one* of those causes of action, it is utterly powerless to deal with the other.

> "* * * The distinction to be observed is between a case where two distinct grounds in support of a single cause of action are alleged, one only of which presents a federal question, and a case where two separate and distinct causes of action are alleged, one only of which is federal in character. In the former, where the federal question averred is not plainly wanting in substance, the federal court, even though the federal ground be not established, may nevertheless retain and dispose of the case upon the non-federal *ground;*

in the latter it may not do so upon the non-federal *cause of action.*" (Court's italics.)

No matter what this Court may decide, therefore, concerning the value of the rights based upon restraint and confinement in this case, it must, if respondents show no alternative ground for jurisdiction, reverse the judgment and remand the cause so that the injunctive provisions concerning the use of streets and public places for speeches and assemblies may be eliminated from the decree, since the causes of action represented by the latter provisions are entirely *separate and distinct* from those based upon physical restraint and confinement, and since, with respect to the former, there is no presumptive jurisdictional amount involved and no proof in the record thereof, as required by the ruling of the Supreme Court in *Kvos* v. *Associated Press, supra.*

As shown in Subpoint (b) under this Point, furthermore, no pretended omnibus cause of action for conspiracy to deprive respondents of their civil rights, generally, has been pleaded in the bill of complaint, nor is such a cause of action legally cognizable as a matter of general tort law. There is therefore no presumption that the matters in controversy, in such regard, have the $3000 value alleged in the bill of complaint.

(n) Petitioners have not waived lack of jurisdiction over subject matter.

Respondents finally resort to the utterly frivolous contention that petitioners, by their attorneys, conceded, prior to the trial, the existence of whatever jurisdictional facts were necessary to sustain the jurisdiction of the Court to enter an injunction, with respect to all of the issues except that relating to

the use of the streets, and, to that end, have incorporated in the record the proceedings of May 26, 1938, antecedent to the trial of the case (R., Vol. IV, pp. 83-100).

A reading of the stenographer's minutes in question will indicate that the most liberal construction of the remarks of counsel for the petitioners could reveal no more than an offer of adjustment or compromise before trial, with the suggestion that, substantively, but not jurisdictionally, the facts in the case might warrant an injunction on the so-called non-controversial points involved, other than that dealing with the use of the streets and public places, for outdoor meetings and that if the consent of the petitioners could be procured, counsel would cooperate in formulating and entering a consent decree to the extent indicated. There never was a consummation of this tentative arrangement, and the case proceeded to hearing *on all issues*, including that of jurisdiction. (See statement of Court, R., Vol. IV, p. 100.)

There is, however, no more firmly established and fundamental principle of jurisprudence than that jurisdiction over the subject matter of a legal proceeding cannot be conferred upon a court by the parties by consent or otherwise, nor can its failure be waived or overcome by an agreement of the parties. *Mitchell* v. *Maurer*, 293 U. S. 237, 247; *Grubb* v. *Public Utilities Commission*, 281 U. S. 470, 475 and *Matthews* v. *Rodgers*, 284 U. S. 521.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the final judgment and decree of injunction entered below be reversed and the bill of complaint ordered dismissed.

Respectfully submitted,

CHARLES HERSHENSTEIN,
EDWARD J. O'MARA,
JAMES A. HAMILL,
JOHN A. MATTHEWS,
MILTON B. CONFORD,
Counsel for Petitioners.

Appendix A.

"AN ORDINANCE to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage.

The Board of Commissioners of Jersey City DO ORDAIN:

1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issues thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County Jail for a period not exceeding ninety days or both.

5. This ordinance shall take effect upon its final passage.

Introduced April 1st, 1930.
Adopted April 15th, 1930.

JOHN BEGGANS,
MICHAEL I. FAGEN,
ARTHUR POTTERTON,
WILLIAM B. QUINN,
FRANK HAGUE,
Commissioners.

Dated, City Clerk's Office,
Jersey City, April 21st, 1930.

EDWARD J. HOLLAND,
City Clerk."

Appendix B.

REVISED STATUTES OF NEW JERSEY.

"40:48-1. *Ordinances: general purpose.* The governing body of every municipality may make, amend, repeal and enforce ordinances to:

* * *

Maintain order. 6. Prevent vice, drunkenness and immorality; to preserve the public peace and order; to prevent and quell riots, disturbances and disorderly assemblages;"

* * *

"40:67-1. *Ordinances relating to.* The governing body of every municipality may make, amend, repeal and enforce ordinances to:

* * *

Use of streets; * * *. c. Prescribe the time, manner in which and terms upon which persons shall exercise any privilege granted to them in the use of any street, highway, alley or public place. * * *"

Appendix C.

REVISED STATUTES OF NEW JERSEY.

"40:61-1. *General powers; acquisition of property.* The governing body of any municipality may:

Parks, playgrounds, beaches and resorts. a. Acquire, lay out, improve, embellish and maintain within and without the municipality, such public parks, squares, open spaces, playgrounds, beaches, water fronts, and places for public resort and recreation, and also streets, avenues, boulevards and parkways leading to and connecting the same, as it may deem advisable, and extend and enlarge the same, or any of them; and for such purposes, acquire, in fee or lease, estate, and by gift, devise, purchase or condemnation, any real estate improved or unimproved, or interest therein, within or without the municipality, suitable therefor;

Pavilions and other buildings. b. Construct therein and thereon pavilions, stands, shelters, and all other suitable buildings and structures, and equip the same with all suitable apparatus and furniture;

Recreation piers. c. Acquire, by lease, gift, devise, purchase or condemnation, one or more docks, wharves, or piers within the municipality to be used for public recreation, in whole or part; construct docks, wharves or piers for such purpose and use, and acquire the real estate and rights necessary therefor, by gift, devise, purchase or condemnation;

Lakes and ponds; beautify banks. d. Acquire by lease, gift, devise, purchase or condemnation, lakes, ponds, streams and other waters and the lands covered thereby, rights of flowage, and other rights therein, and the banks, and shores thereof; and con-

vert the same into public parks and places for resort and recreation; improve and embellish the same; construct dams and other means of impounding waters to create artificial lakes and ponds for places of public resort and recreation and construct suitable buildings and structures in and upon such lands.

Music: e. Provide music in the public parks, recreation grounds, and public places of the municipality;

Rules and regulations posted. f. By ordinance make and enforce rules and regulations for the government, use and policing of all such public parks, open spaces, playgrounds, beaches, water fronts and places for public resort and recreation and to provide penalties for violations thereof. All such rules and regulations shall be conspicuously posted in all places where effective;

Lease of public places. g. Lease, for any term not exceeding five years, any part of any public resort and recreation place owned by the municipality and any building thereon, or part thereof, not presently needed for such use; and

Lease of concessions; advertisement for bids; terms of lease. h. Let out and rent any privilege in any of its parks, beaches, water fronts and places for public resort and recreation, to the highest responsible bidder therefor, after advertisement of the time and place of such letting, at least ten days prior to the receipt of bids, in a newspaper circulating in the municipality, and upon such terms and conditions as it may prescribe. Upon the violation of the terms upon which any lease or privilege is granted, the same shall become void, and said governing body may so declare, and may re-enter any place so leased and prevent the exercise of the privilege so forfeited.

Appendix D.

The Revised Statutes of 1937 of the State of New Jersey, 2:63-1 and 2:63-10 provide:

"Article 1. Property Loss From Mob Violence or Riots in General.

2:63-1. Liability of City or County; Action.

When, by reason of a mob or riot, any property, real or personal, is destroyed or injured, the city in which the mob congregates or riot occurs, or, if not in a city, the county in which such property is or was situate, shall be liable to the person whose property was so destroyed or injured for the damages sustained thereby, recoverable in an action at law by or in behalf of such person."

"Article 2. Injury to Property or Person or Loss of Life From Mob Violence.

"2:63-10. Liability of City or County in Damages; Amount. Any person who, by reason of mob violence as defined and stated in sections 2:152-1 to 2:152-3 of this title, suffers material damage to his property or injury to his person shall have an action against the city in which such damage is suffered or injury inflicted, or, if not in a city, then against the county in which such damage is suffered or injury inflicted for such damages as he may sustain, to an amount not exceeding five thousand dollars."

FILE COPY

Office - Supreme Court, U. S.
FEB 6 1939
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1938

No. 651

FRANK HAGUE, individually and as Mayor of Jersey City, *et al.*,

Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Respondents.

RESPONDENTS' STATEMENT JOINING IN PETITIONERS' PRAYER FOR A WRIT OF CERTIORARI

MORRIS L. ERNST,
SPAULDING FRAZER,
Solicitors for Respondents,
No. 285 Madison Avenue,
New York, N. Y.

SPAULDING FRAZER,
DAVID STOFFER,
LEE PRESSMAN,
MORRIS L. ERNST,
BENJAMIN KAPLAN,
HARRIET F. PILPEL,
Of Counsel.

Supreme Court of the United States

October Term, 1938

No.....

FRANK HAGUE, individually and as Mayor of Jersey City, *et al.*,

Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Respondents.

RESPONDENTS' STATEMENT JOINING IN PETITIONERS' PRAYER FOR A WRIT OF CERTIORARI

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Committee for Industrial Organization, American Civil Liberties Union, *et al.*, respondents upon this petition for certiorari, by their solicitors, hereby join in petitioners' prayer that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Third Circuit, entered in the above-entitled case on January 26, 1939.

Nature of the Case

The nature of the case and of the issues involved is fully and accurately described in the majority opinion of the Circuit Court of Appeals, to which the Court is respectfully referred. Respondents, in joining in the prayer for the writ, do not wish to be taken as endorsing the statements of fact or law contained in the body of the petition or in the supporting brief, some of which are inaccurate and misleading.

Reasons For Joining in Prayer for Writ

Respondents believe that the decree sought to be reviewed is correct in every particular; that Judge Biggs' opinion for the majority of the Circuit Court of Appeals is unanswerable in law, logic and policy; and that the conclusions reached below are not at variance with, but are supported and compelled by controlling authority in this Court.

Despite the foregoing, respondents submit that the public interest requires further and final review of the case by this Court. The issues involved are of paramount national concern. They go to the roots of the democratic process and the American way of life, which are today challenged in various parts of the country by tactics of official suppression. In the case at bar, these tactics were not denied and are still defended by petitioners under a claim of constitutional right. There is pressing need that this claim should be rejected with the utmost clarity and finality.

It is further submitted, with deference, that the current movement of world events places this Court under increased obligation to repulse attacks upon the civil liberties which lie at the base of the form of government under which we live, and that the present controversy affords clear occasion and opportunity for the discharge of that obligation.

Scope of Review Sought

Respondents are desirous that, upon issuance of the writ, this Court should examine and review all of the issues in the case passed on by the Circuit Court of Appeals without limitation to the number or form of the issues specified by the petitioners. Such plenary review is necessary to an adequate consideration of the case, all of the issues being integral to the plan or conspiracy, heretofore found, to deprive respondents of their constitutional rights.

WHEREFORE respondents join in petitioners' prayer that a writ of certiorari issue as above set forth.

Dated, February 6, 1939.

MORRIS L. ERNST,
SPAULDING FRAZER,
Solicitors for Respondents.

SPAULDING FRAZER,
DAVID STOFFER,
LEE PRESSMAN,
MORRIS L. ERNST,
BENJAMIN KAPLAN,
HARRIET F. PILPEL,
of counsel.

FILE COPY

Supreme Court, U. S.
FILED
FEB 27 1939
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

No. 651 **October Term, 1938**

FRANK HAGUE, individually and as Mayor of Jersey City, DANIEL J. CASEY, individually and as Director of Public Safety of Jersey City, HARRY WALSH, individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Defendants-Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, UNITED RUBBER WORKERS OF AMERICA, WILLIAM J. CARNEY, WILLIAM J. TRAYNOR, WILLIAM P. McGINN, SAMUEL MACRI, JAMES P. SWEENEY, DANIEL J. FOLEY and AMERICAN CIVIL LIBERTIES UNION,

Plaintiffs-Respondents.

BRIEF OF THE COMMITTEE ON THE BILL OF RIGHTS, OF THE AMERICAN BAR ASSOCIATION, AS FRIENDS OF THE COURT.

THE COMMITTEE ON THE BILL OF RIGHTS, OF THE AMERICAN BAR ASSOCIATION,

DOUGLAS ARANT
(of the Alabama Bar)

ZECHARIAH CHAFEE, JR.
(of the Rhode Island Bar)

GRENVILLE CLARK, *Chairman*
(of the New York Bar)

OSMER C. FITTS
(of the Vermont Bar)

LLOYD K. GARRISON
(of the Wisconsin Bar)

GEORGE I. HAIGHT
(of the Illinois Bar)

MONTE M. LEMANN
(of the Louisiana Bar)

ROSS L. MALONE, JR.
(of the New Mexico Bar)

BURTON W. MUSSER
(of the Utah Bar)

JOHN FRANCIS NEYLAN
(of the California Bar)

JOSEPH A. PADWAY
(of the Wisconsin Bar)

CHARLES P. TAFT
(of the Ohio Bar)

The members of the Committee.

INDEX.

	PAGE
PRELIMINARY STATEMENT	1
THE COMMITTEE'S POSITION	3
ARGUMENT.	
I. Freedom of assembly is an essential element of the American democratic system	7
II. The protection of freedom of assembly provided by the decree is in accord with the modern doctrine of this Court in its interpretation of the constitutional guarantees of freedom of speech and of assembly	11
III. Whether or not the ordinance is unconstitutional on its face, such threats and alleged apprehension of disorder as appear in this case do not justify refusal of a permit. The ordinance has been unconstitutionally administered in that the defendant officials adopted a standard under which permits were denied because of threatened disorder without reference to the possibility of controlling such disorder	14
(1) In denying permits on the theory that threatened disorder, irrespective of its controllability, justifies such denial, the defendant officials have administered the ordinance in an unconstitutional manner	16
(2) The constitutional doctrine for which we contend is that the public authorities have the obligation to provide police protection against threatened disorder at lawful public meetings in all reasonable circumstances	19

PAGE

(3) The question of the constitutionality of the ordinance on its face 22

IV. A city cannot constitutionally close both its streets and its parks to public meetings. In view of the importance of open air meetings as a means for public discussion, some provision must be made for such meetings at reasonable times and places 26

(1) Analysis of the decree of the District Court in respect of public meetings, and of its modification by the Circuit Court of Appeals 26

(2) The importance of outdoor meetings as a medium of public discussion 27

(3) Discussion of a city's duty to provide sites for open air meetings 29

(4) Davis *v.* Massachusetts, 167 U. S. 43, relied upon by defendants, is distinguishable in respect of its facts and the issue involved. Moreover, its rationale is incompatible with more recent decisions of this Court. A city does not control its parks like a private owner of property, but holds them for public purposes including public meetings 32

SUMMARY AND CONCLUSION 40

Table of Cases

	PAGE
Blake v. *McClung*, 172 U. S. 239 (1898)	35
Commonwealth v. *Davis*, 162 Mass. 510, 39 N. E. 113 (1895), aff'd *Davis* v. *Massachusetts*, 167 U. S. 43 (1897)	32, 34
Crowell v. *Benson*, 285 U. S. 22, 62 (1932)	25
Davis v. *Massachusetts*, 167 U. S. 43	5, 32, 38, 41
De Jonge v. *Oregon*, 299 U. S. 353 (1937)	9, 12, 34
Fiske v. *Kansas*, 274 U. S. 380 (1927)	13
Frost Trucking Co. v. *Railroad Commission of California*, 271 U. S. 583 (1926)	36
Gitlow v. *New York*, 268 U. S. 652 (1925)	12
Grosjean v. *American Press Co.*, 297 U. S. 233 (1936)	13
Herndon v. *Lowry*, 301 U. S. 242 (1937)	13
Langnes v. *Green*, 282 U. S. 531, 536-538 (1930)	27
Lovell v. *Griffin*, 303 U. S. 444, 452 (1938)	13, 34
Missouri ex rel. Gaines v. *Canada*, 59 Sup. Ct. 232 (decided December 12, 1938)	36
Near v. *Minnesota*, 283 U. S. 697 (1931)	13
Smith v. *Cahoon*, 283 U. S. 553 (1931)	34
Stromberg v. *California*, 283 U. S. 359 (1931)	13
Terral v. *Burke Construction Co.*, 257 U. S. 529 (1922)	36
Thomas v. *Casey*, 1 A. (2d) 866, 870 (1938)	22, 35
Western Union Telegraph Co. v. *Kansas*, 216 U. S. 1, 54 (1910)	36
Whitney v. *California*, 274 U. S. 357, 377 (1927)	19
Wright v. *Vinton Branch*, 300 U. S. 440, 461 (1937)	25
Yick Wo v. *Hopkins*, 118 U. S. 356 (1886)	16

OTHER AUTHORITIES.

	PAGE
"Alton Riots" (G. Holton, 1838) (pamphlet)	9
Brief in Opposition to the Expulsion of the Socialist Assemblymen from the New York Legislature (1920)	9
Chafee, *Freedom of Speech* (Harcourt, Brace and Howe, 1920)	17
Chafee, *The Inquiring Mind* (Harcourt, Brace & Co., 1928)	8, 17
Cheyney, "Freedom and Restraint; A Short History," in *Annals of the American Academy of Political and Social Science* (November, 1938)	11
"Benjamin Franklin on the Art of Virtue" (The Franklin Institute, Philadelphia, 1938) (pamphlet)	19
Hertz, *Abraham Lincoln, A New Portrait* (Liveright, 1931)	7
London *Times*, October 8, 1936	6
Sears, *Bronson Alcott's Fruitlands* (1915)	22
The Declaration of Independence	7
Woods, *Policeman and Public* (Yale University Press, 1919)	17

Supreme Court of the United States

No. 651 October Term, 1938

FRANK HAGUE, individually and as Mayor of Jersey City, DANIEL J. CASEY, individually and as Director of Public Safety of Jersey City, HARRY WALSH, individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Defendants-Petitioners,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, UNITED RUBBER WORKERS OF AMERICA, WILLIAM J. CARNEY, WILLIAM J. TRAYNOR, WILLIAM P. MCGINN, SAMUEL MACRI, JAMES P. SWEENEY, DANIEL J. FOLEY and AMERICAN CIVIL LIBERTIES UNION,

Plaintiffs-Respondents.

BRIEF OF THE COMMITTEE ON THE BILL OF RIGHTS, OF THE AMERICAN BAR ASSOCIATION, AS FRIENDS OF THE COURT.

Preliminary Statement.

The Committee on the Bill of Rights, of the American Bar Association, was created under authority of a resolution of the House of Delegates of the Association, adopted on July 29, 1938. The Committee's membership is as stated below (see Note).

NOTE: Douglas Arant (Alabama), Zechariah Chafee, Jr. (Rhode Island), Grenville Clark, Chairman (New York), Osmer C. Fitts (Vermont), Lloyd K. Garrison (Wisconsin), George I. Haight (Illinois), Monte M. Lemann (Louisiana), Ross L. Malone, Jr. (New Mexico), Burton W. Musser (Utah), John Francis Neylan (California), Joseph A. Padway (Wisconsin), and Charles P. Taft (Ohio).

The general function of the Committee is to defend the fundamental rights and immunities of the citizen, secured by the Bill of Rights. The Committee is authorized (with the approval of the President of the American Bar Association) to take appropriate action in cases deemed to involve substantial violations of such rights and immunities where the case involves issues of such a character as to call for presentation from an impartial standpoint and with special reference to the interest of the public at large in the principles involved. Believing that this case presents issues of this nature, the Committee (with the authority of the President of the Association) filed a brief as friends of the Court in the Court of Appeals for the Third Circuit. The Committee also voted to ask leave to file a similar brief in this Court if the Court should grant a writ of certiorari. The writ of certiorari was granted on February 6, 1939. This brief is filed with the approval of the President of the Association and with the written consent of counsel for the parties.

The Committee has no interest in this litigation save as its outcome will affect the integrity of the fundamental rights that are here in question, and particularly the right of assembly. The Committee will confine its discussion to the question of public assembly. We do not minimize the importance of safeguarding the right of free access against arbitrary and illegal "deportations" or the right of communication through distribution of circulars and the use of placards (covered by paragraphs A, 1, 2 and 3, and B, 1, 2 and 3 of the decree). However, the decision of the Circuit Court of Appeals was unanimous on these matters and we cannot think that the provisions of the decree in these respects involve questions on which the law is un-

settled. With respect, however, to the limits of free assembly in streets and parks, there has been uncertainty and conflict in the decisions and this Court has yet to speak definitively on that subject.

The Committee's Position.

The Committee believes that the course of conduct of the officials of Jersey City, as revealed by this record, constitutes a serious abridgement of the constitutional right "peaceably to assemble" of so deliberate and important a character as to be of national consequence.

We believe this to be true because of the findings of fact of the District Court, which have been confirmed by the Circuit Court. These findings of fact include findings that the plaintiff labor organizations and the American Civil Liberties Union are lawfully organized for lawful purposes that are within "the letter and spirit of our Constitution and laws and of the theory of our democratic institutions"; that the "defendants in their official capacities have adopted and enforced the deliberate policy of forbidding the plaintiffs and persons acting in sympathy or in concert with them, from communicating their views to the citizens of Jersey City through the holding of meetings or assemblies in the open air and at public places"; that various of the plaintiffs applied pursuant to the ordinance of Jersey City for permits to hold outdoor assemblies in public places in Jersey City but that the applications were denied; that there is no proof that the parks of Jersey City are "dedicated for purposes other than the general recreation of the public"; that Jersey City has granted permits to "various persons other than the plaintiffs"

desiring to speak at meetings in the Jersey City streets; that enforcement of the policies of the Jersey City officials as against the plaintiffs "results in irreparable damage to them"; and that there is no competent proof that the plaintiffs C. I. O. and American Civil Liberties Union "have so conducted themselves as to forfeit the protection of a court of equity." See Findings of Fact B, 4; E, 1, 2, 3, 7; F, 2, 3. (IV R. 129, 132-133, 134.)

We predicate our argument, in so far as it assumes facts, upon these findings of fact.

We shall submit to the Court the following considerations:

First, that the integrity of the right "peaceably to assemble" is an essential element of the American democratic system.

Second, that the protection of the right of assembly provided by the decree is in harmony with the modern doctrine of this Court which gives a wide scope to the constitutional guarantees of freedom of speech and assembly.

Third, that whether or not the ordinance in question is constitutional *on its face*, it has been *administered* in an unconstitutional manner; that threats and alleged apprehension of disorder of the sort appearing in this case do not justify the refusal of permits to hold meetings; that on the contrary it is the duty of public authorities to provide adequate police protection to prevent threatened disorder.

Fourth, that if the constitutional rights of assembly and free speech are to be effectively protected, a city cannot be permitted to close both its parks and its streets to public meetings but must in some manner make provision for such meetings at reasonable

times and places on public property. Here we shall advance the thought that the availability of a city's streets for public meetings should not be treated separately from the availability of its parks, but that they should be regarded as parts of a single problem, viz., the safeguarding of free speech and assembly in a manner consistent with the rights of the public to use their streets and parks for other purposes. Under this head we shall point out that the case of *Davis* v. *Massachusetts*, 167 U. S. 43, relied on by the defendants, is distinguishable on its facts, and furthermore that its doctrine is inconsistent with the maintenance of a vitally important medium of public discussion.*

It is the Committee's position that the right of assembly is one of the most vital elements of our system of government and that the right to hold open-air meetings in cities forms an important part of this right of assembly. It is the interference with that basic attribute of American citizenship that has convinced this Committee that there is here involved a far-reaching question, the decision of which will be of vital importance in respect of the maintenance of American civil rights.

We are confirmed in this conclusion by the very fact that the refusal of the permits for the meetings was clearly on the ground that the persons desiring to speak were unpopular in Jersey City and that the sentiments they might utter would be unpopular. In the Committee's view, this condition *emphasizes the importance of the issue.*

---

* Having in mind that the findings and decree refer to "plaintiffs" and "defendants," we refer throughout to the plaintiffs-respondents as "the plaintiffs" and to the defendants-petitioners as "the defendants."

For if it should ever come about that the law countenances the suppression of free speech on the basis of the inacceptability to the prevailing majority opinion of the speakers or their sentiments, the very basis of the doctrines on which our institutions are built would be destroyed.

Our general position is well expressed by the words of a British statesman at the time of the disturbances in London in 1936 caused by the meetings and parades of the Fascist organization of Oswald Mosley:

> "Democracy does not mean that the side we approve of is at liberty to do what it pleases, while the side we do not approve of must be dealt with by repressive measures. Neither does it mean that upon a threat to break up a meeting the authorities should automatically prohibit the meeting; if so, there would be an end of free speech and no unpopular cause would ever gain a hearing."*

For the confirmation and preservation of the constitutional rights of free speech and assembly, we shall submit that this Court should go at least so far as to sustain the decree of the District Court with regard to public meetings.

---

* Sir John Simon, Home Secretary, in the London *Times*, October 8, 1936.

ARGUMENT.

I.

Freedom of assembly is an essential element of the American democratic system.

At the root of this case lies the question of the *value* in American life of the citizen's right to meet face to face with others for the discussion of their ideas and problems —religious, political, economic or social.

Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But, as we later point out in detail, assemblies face to face perform a function of vital significance in the American system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history.

The right of assembly, we affirm, lies at the foundation of our system of government. The cornerstone of that system is that government—all government, whether federal, state or local—shall be based on the consent of the governed.[1] But "the consent of the governed" implies not only that the consent shall be uncoerced but also that it

---

[1] "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; * * *." (The Declaration of Independence.) In his debate with Douglas at Urbana, Illinois on October 24, 1854, Lincoln said, "No man is good enough to govern another man without that other's consent." See Emanuel Hertz, *Abraham Lincoln, A New Portrait* (Liveright, 1931), p. 645.

shall be grounded on adequate information and discussion. Otherwise the consent would be illusory and a sham.

No truth has been more strongly enforced by the history of recent years than that the suppression of discussion leads directly to tyranny and the loss of all other civil rights. On the other hand experience proves the necessity of a *constant process of open debate* if a free and democratic government is to function effectively.[2] Only in this way can public opinion take shape in legislation that will command the general support which will make it law in a real sense. Only so, also, can government on its administrative side be kept reasonably free from abuses. Only through free discussion, in short, can democracy function at all.

These are old truths but they need constantly to be remembered and applied.

There is a special aspect of free expression here present. The effort in this case was to suppress only *some* communications and *some* meetings. As above mentioned it is plain that the suppression was on the basis that the speakers and their probable utterances would be unpopular. And as already stated it is this very feature that gives a special importance to this case. What may be popular today may be unpopular tomorrow; and no principle could be more destructive of American free speech than to judge the permissibility of a public meeting by any standard of its popularity. The right to express unpopular opinions and to hold unpopular meetings is of the essence of American liberty. This is so not only for reasons of principle

[2] "Satisfactory public opinion in a crisis is impossible unless both sides can present their contentions in meetings and through the press." (Chafee, *The Inquiring Mind*, (Harcourt, Brace & Co., 1928) p. 166.)

but for practical reasons of government. If criticism, however severe and unpopular, of majority beliefs were suppressed nothing is more certain than that the American system could not long survive.

This consideration has often been emphasized by far-sighted men. One hundred years ago Edward Beecher (a brother of Harriet Beecher Stowe) said:

> "We are more especially called upon to maintain the principles of free discussion in cases of unpopular sentiments or persons, as in no other case will any effort to maintain them be needed."[3]

A lawyers' committee, of which the present Chief Justice was a member while at the bar in 1920, said:

> "Hyde Park meetings and Soap Box oratory constitute the most efficient safety-valve against resort by the discontented to physical force."[4]

In *De Jonge* v. *Oregon*, 299 U. S. 353 (1937), the Chief Justice wrote:

> "Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. * * *
>
> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights

[3] Pamphlet on the "Alton Riots", published at Alton, Illinois, by G. Holton in 1838.

[4] Brief of Special Committee of the Association of the Bar of the City of New York in opposition to the expulsion of the Socialist Assemblymen from the New York Legislature, dated January 20, 1920, p. 41. The members of the Committee were Charles E. Hughes, Morgan J. O'Brien, Louis Marshall, Joseph M. Proskauer, and Ogden L. Mills.

themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. * * *

"* * * The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." (pp. 364-365.)

These are the general principles that we stress in this case. The defendant officials seem to have forgotten or ignored them. They advance pleas of the unpopularity of the defendants, of objections by certain citizens of Jersey City to their sentiments and to their being heard at all. But they seem to forget that those who would suppress or abridge free speech and assembly have a heavy burden of justification and that the kind of excuses they advance must be weighed against the great consideration of preserving an underlying value of American life that is specifically secured by our fundamental law.

When all is said the preservation of free speech and assembly depends on ascribing a high *relative value* to these rights. It has recently been well said that there is

only one way to safeguard open discussion, "that is, to place so high a valuation on freedom of expression in all its forms as never to practice or permit any interference with it."[5]

At the outset we wish to stress the soundness of this approach. We place a "high valuation" on freedom of expression. We believe that freedom of assembly—a vital aspect of free expression—should be upheld against intolerant and arbitrary action. It is because we hold this general point of view that we have asked leave to file this brief.

II.

The protection of freedom of assembly provided by the decree is in accord with the modern doctrine of this Court in its interpretation of the constitutional guarantees of freedom of speech and of assembly.

The whole recent trend of decision by this Court is to afford solid protection to the rights of free speech and assembly.

Freedom of the press and of speech and assembly are *expressly* protected by the First Amendment of the Constitution of the United States against *federal* interference. But it has required judicial interpretation to make it plain that these types of freedom are also protected by the Constitution against restrictions on the part of state and municipal governments. This principle is now, however, thoroughly established.

---

[5] Edward P. Cheyney, "Freedom and Restraint: A Short History", in *Annals of the American Academy of Political and Social Science*, November, 1938.

The First Amendment provides: "Congress shall make no law * * abridging the freedom of speech * * or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The Fourteenth Amendment provides: "* * * nor shall any State deprive any person of * * liberty * * without due process of law." In a series of cases, of which one of the first was *Gitlow* v. *New York*, 268 U. S. 652 (1925), the Court has held that "liberty" in the Fourteenth Amendment includes the various types of liberty of expression which are guaranteed by the First Amendment. This means, as the Court has held, that neither state governments nor city governments, which are agencies of the State, can arbitrarily or unreasonably restrict freedom of speech or freedom of assembly.

The decision which specifically referred to freedom of assembly is *De Jonge* v. *Oregon, supra,* decided in 1937. In this case, the Court held that a person cannot constitutionally be convicted of crime merely for assisting in the conduct of a meeting held under the auspices of the Communist Party. De Jonge had been convicted in a state court for speaking at a meeting called by the Communist Party to protest against police methods during a strike. The meeting was open to the public and the audience consisted largely of non-members of the Communist Party. Nothing illegal was said or done at the meeting by De Jonge or anybody else, and no unlawful literature was distributed there. However, the jury was allowed to consider Communist literature distributed at other times and places, and to convict De Jonge on the ground that the Communist Party had unlawfully advocated violent doctrines. As the Chief Justice said (299 U. S. at p. 362):

> "His sole offense as charged, and for which he was convicted and sentenced to imprisonment for seven years, was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party."

The Court set aside the conviction because it violated the constitutional right of freedom of assembly. The principle for which the decision stands is that a speaker cannot properly be convicted on the sole charge that he participates in a meeting *held under particular auspices;* punishment can constitutionally be based only on what is said or done at the meeting itself.

This is the only recent decision of the Court squarely on the question of free assembly. But there are other decisions upholding the principle that expression must not be arbitrarily suppressed. Among the forms of interference with liberty of discussion which have been held void by the Court since the *Gitlow* case are statutes imposing criminal penalties for writings and speeches not clearly dangerous, sweeping injunctions against newspapers, license taxes on newspapers, and ordinances requiring permits for the distribution of circulars on public streets. *Fiske* v. *Kansas,* 274 U. S. 380 (1927); *Stromberg* v. *California,* 283 U. S. 359 (1931); *Near* v. *Minnesota,* 283 U. S. 697 (1931); *Grosjean* v. *American Press Co.,* 297 U. S. 233 (1936); *Herndon* v. *Lowry,* 301 U. S. 242 (1937); *Lovell* v. *Griffin,* 303 U. S. 444 (1938).

Although none of the recent cases which establish the modern doctrine of the Court deals specifically with the subject of interference with freedom of assembly *through the denial of permits for outdoor meetings,* nevertheless

the denial by this method of the right of assembly is closely analogous to the suppression of unpopular meetings by criminal prosecutions, which was held invalid in the *De Jonge* case. The condemnation of such suppression is also within the principle of other decisions above cited, for the suppression of public meetings through denial of permits does not differ fundamentally from the efforts to impair free expression in other forms, that have been condemned by this Court in the cases cited immediately above.

These decisions cannot be read without a realization that the Court has recently announced doctrines that go a long way to safeguard rights of the sort here involved.

III.

Whether or not the ordinance is unconstitutional on its face, such threats and alleged apprehension of disorder as appear in this case do not justify refusal of a permit. The ordinance has been unconstitutionally administered in that the defendant officials adopted a standard under which permits were denied because of threatened disorder without reference to the possibility of controlling such disorder.

The defendants seek to justify their repeated denials of permits to the plaintiffs on the ground not only that they disapproved of the plaintiffs and of their sentiments, but also on the ground that certain persons and organizations of Jersey City threatened disorder if the meetings were held. In the view of our Committee this is a crucial feature of the case because it involves a question that is vital to the maintenance of free speech and assembly, viz., whether

threatened disorder, not on the part of those desiring to speak but on the part of their opponents, constitutes a valid excuse for refusing to permit a public meeting for lawful purposes.

In affirming the decree of the District Court (and enlarging it in respect of the streets) the Circuit Court set forth two distinct lines of reasoning: *First*, that the ordinance under which the defendants purported to act is unconstitutional *on its face*, and *second*, that even if the ordinance be considered valid on its face, it has been unconstitutionally administered. The Circuit Court made it clear that these reasons were deemed independent, and that the second reason by itself was sufficient to support the decision.

A principal ground upon which, as we believe, the ordinance was void in its administration is that the officials of Jersey City acted upon the theory that threats of disorder, irrespective of the controllability of the threatened disorder, furnished a valid excuse for the denial of the permits. As already mentioned, the defendants also adopted another wrong standard of administration in that they considered themselves justified in discriminating against the plaintiffs because they did not like them and disapproved their aims and beliefs. The use of each of these erroneous standards was, we believe, equally fatal to the constitutionality of the ordinance in its administration. However, it seems that the public has more clearly grasped the invalidity of the plea that the plaintiffs were unpopular than of the plea that the suppression of the meetings was justifiable to preserve public order. Since, in our view, these two pleas are equally specious and equally dangerous to freedom of assembly we wish under this head to stress the question of the threats of disorder.

(1.) *In denying permits on the theory that threatened disorder, irrespective of its controllability, justifies such denial, the defendant officials have administered the ordinance in an unconstitutional manner.* To hold otherwise would establish a precedent whereby, as a practical matter, free speech through open-air meetings might be suppressed in every city of the country. Such a result would be a blow to constitutional liberties in a vital spot.

In making this statement we do not minimize the importance of the maintenance of public order and of reasonable public tranquillity. We recognize that the right of free assembly, like freedom of speech or even religious liberty, has some limitations in the interests of public decency and order. In this case, however, it is unnecessary to speculate as to theoretical conditions which might conceivably make it impossible to provide adequate police protection. No such extreme state of facts is shown here. No facts appear to support any claim of powerlessness of the police; no evidence whatever of police helplessness was adduced. The defendants adopted a theory or standard under which the refusal of the permits was justified because of the mere threat of disorder without reference to its controllability by police action. The essential point is that, in administering the ordinance, the defendant officials were acting upon a standard which was erroneous in the sense that its application operated to suppress the plaintiffs' rights of free speech and assembly.

In this state of the case, the action of the defendant officials must be dealt with as though the ordinance itself prescribed in terms the standard which they adopted in enforcing it. Since *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886), this Court has recognized that a statute or ordi-

nance enacted for the guidance of official action must be dealt with, for constitutional purposes, as though it incorporated the rule by which the officials have in fact administered it. Constitutional attacks upon the administration of a statute fair on its face have usually been based upon charges of discrimination in violation of the equal protection clause; but the principle underlying such cases is also clearly applicable where, as here, the administrative standard results in the deprivation, without due process of law, of the liberty to assemble.

In this matter of public meetings, a process of mutual adjustment, of give-and-take, is required on both sides. Public order and the protection of property are precious but freedom of discussion is precious also. If the latter is to be preserved some danger of disorder must be faced for the sake of the constitutional right of free assembly. It is natural that threats of trouble should often accompany meetings on controversial questions. But it is not consistent with American principles to suppress the meetings on that account. The practice under ordinary conditions in our large cities is for the authorities to arrange with the applicants to put the meeting in a suitable place, and have enough policemen on hand to quell apprehended disturbances.[6]

The requirement that a permit must be applied for on reasonable notice gives the city authorities the opportunity

---

[6] See the enlightening observations by a former Police Commissioner of New York City during disturbances:

Arthur Woods, *Policeman and Public* (Yale University Press, 1919), pp. 73-78; his text is abstracted in Chafee, *Freedom of Speech* (Harcourt, Brace and Howe, 1920), pp. 177-178, and *The Inquiring Mind* (Harcourt, Brace & Co., 1928), pp. 151-152.

to ascertain the danger of disturbances and then to provide a sufficient police force to meet any such danger. Moreover, this procedure makes it possible, if permits are sought for several meetings on the same day, for each to be assigned an appropriate place. All this would be in accordance with the give-and-take principle of our constitutional system; but no such course was followed here.

We have thus far considered the threat of disorder without regard to its source. There is, however, a special circumstance in this case: The findings indicate no tendency to disorder on the part of the speakers at the forbidden meeting (see Findings of Fact, paragraph E, 4, 5, 6, IV R. 113) or that their *supporters* at such meetings would promote disorder. At most, it appears that *opponents* of the speakers had threatened to break up the meetings; and there is no evidence that these threats could not have been successfully resisted if the city officials had desired to provide adequate police protection. In short, no evidence appears of any *bona fide* intention or effort to protect the meetings applied for; and no evidence appears that Jersey City would have been unable to afford adequate police protection if its officials had had the will to do so.

On this state of facts the real question at issue is whether *any* threat of disorder, even though only by opponents of the speakers, excuses the suppression of open-air meetings through the denial of permits.

We submit that if it should be so held, the constitutional right of free assembly would to a large extent have become a mockery. Such a doctrine could only mean that a constitutional right is subject to destruction by an arbitrary official decision, notwithstanding that a basic object of the Bill of Rights is to protect citizens from arbitrary action of that very character.

The doctrine urged by the defendants, that the mere threat of disorder is a valid constitutional ground for refusing a permit, would be appropriate only to a nation of Timid Souls. But as Mr. Justice Brandeis said of the generation that included the framers of the First Amendment:

> "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty." *Whitney* v. *California*, 274 U. S. 357, 377 (1927).

(2.) *The constitutional doctrine for which we contend is that the public authorities have the obligation to provide police protection against threatened disorder at lawful public meetings in all reasonable circumstances.* It is, we submit, their duty to make the right of free assembly prevail over the forces of disorder if by any reasonable effort or means they can possibly do so.

In no other way can the right of free assembly be made a reality. Surely it must be clear that in order to "secure" the rights of free speech and assembly against "abridgement," it is essential not to yield to threats of disorder.[7] Otherwise these rights of the people to meet and of speakers to address the citizens so gathered, could not merely be "abridged" but could be destroyed by the action of a small

---

[7] The word "secure" as used in the Constitution—"to . . . secure the blessings of liberty to ourselves and our posterity"—means "make safe" rather than "acquire" or "obtain." That this was the contemporary meaning of "secure" is well illustrated by the following sentence of Franklin: "To acquire those [virtues] that are wanting, and secure what we acquire, as well as those we have naturally, is the subject of an art." Pamphlet, "Benjamin Franklin on the Art of Virtue" (The Franklin Institute, Philadelphia, 1938).

minority of persons hostile to the speakers or to the views they would be likely to express.

The doctrine invoked by the Jersey City officials seems to be the opposite of that just stated. In essence, it is that if the city authorities do not approve the speakers or the purpose of the meeting, and if some of the community object and threaten disorder, these circumstances alone justify the suppression of the meeting. It is apparent that this doctrine, if upheld, would place the rights of free speech and assembly in open-air meetings at the mercy of any faction even though a small one. But in the view for which we contend, it is immaterial whether the faction or opposition is small or great. We submit that it is the duty of the officials to prevent or suppress the threatened disorder with a firm hand instead of timidly yielding to threats.

It happens to be asserted in this case that the threatened disorder was fomented by the city authorities themselves in collusion with those who proposed to attack the meetings. The Circuit Court was impressed by the evidence supporting this assertion. (IV R. 105, 115.) If true, the assertion is interesting but is not essential to the rightness of the decree. The doctrine for which we contend will apply although the threatened disorder is spontaneous. It would merely apply, *a fortiori,* if it should appear that there was collusion between the city authorities and those threatening disorder whereby the threat was stimulated in order to use it as an excuse for denying the permit.

The more one considers the consequences that would follow from the upholding of Jersey City's position in this case, the more one is struck with the effects it would have in impairing constitutional liberty.

"The right of the people peaceably to assemble" cannot mean that the right ceases unless everybody present, including opponents of the speakers, is certain to be peaceable. Law-abiding speakers and their supporters should not be deprived of the great American institution of assemblage in the open air because other persons are intolerant and ready to violate the law against assault and battery. Such a doctrine would mean that a citizen loses his constitutional rights because his opponent threatens to commit crimes.

Surely a speaker ought not to be suppressed because his opponents propose to use violence. It is they who should suffer for their lawlessness, not he. Let the threateners be arrested for assault, or at least put under bonds to keep the peace.

If a permit can constitutionally be refused on the grounds relied upon by the defendants, a small number of lawless men by passing the word around that they intend to start a riot could prevent any kind of meeting, not only of radicals or Socialists or trade unionists, but also of Negroes, of Jews, of Catholics, of Protestants, of supporters of German refugees, of Republicans in a Democratic community or *vice versa.* Indeed, on any such theory, a gathering which expressed the sentiment of a majority of law-abiding citizens would be forbidden merely because a small gang of hoodlums threatened to break up the meeting. The only proper remedy for such situations, small or serious, is the police protection to which citizens are entitled in public places, whether they are there singly or in groups.

In recently denying a mandamus to compel the issuance of a speaking permit in Jersey City to Norman Thomas, the New Jersey court spoke of the public's "right to tran-

quillity" as if this were the only consideration. *Thomas v. Casey*, 1 A. (2d) 866 (1938). But the assertion of the predominance of a "right to tranquillity" over the right of free discussion represents the basic error of the New Jersey decision and of the defendants' contentions here. It amounts to saying that a man can be denied freedom because of the intolerance of his opponent. The *reductio ad absurdum* of the defendants' contention occurred 100 years ago in New England when an eccentric old man was imprisoned because he persisted in wearing such a long beard that the people kept mobbing him. The authorities maintained "order" by putting him in jail. See Sears, *Bronson Alcott's Fruitlands*, c. IV (1915).

(3.) *The question of the constitutionality of the ordinance on its face.* Although the decision of the Circuit Court to the effect that the ordinance is unconstitutional on its face was not perhaps essential to the decision, this Court may deem the question important as bearing upon the validity of many other ordinances of like general purpose. Many cities have ordinances requiring permits for meetings in streets and parks. Few, if any, of these may contain language like that of the Jersey City ordinance with reference to the refusal of permits to prevent riots and disorders. However, this omission might make numerous ordinances conceivably more drastic than that of Jersey City in that they might be interpreted as purporting to give the licensing authority a virtually unlimited discretion to refuse permits for any reason. In view of the doubts raised on this score by the Circuit Court, we hope that this Court will find it advisable to deal with the question in order to inform cities as to what sort of ordinances are valid. Accordingly, we submit the following observations on this phase of the case.

The ordinance, after requiring that an application for a permit for a meeting in the public streets and parks shall be made to the Director of Public Safety on three days' notice, continues:

> "3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage."

The essential ground upon which the Circuit Court of Appeals held this ordinance void on its face appears to have been that the ordinance by its very terms contains an unconstitutional standard for the guidance of the licensing officer. The Circuit Court did not deny that an ordinance merely requiring an application to be made to a city official for a permit, or giving the official a reasonable discretion as to the time or place of the meeting in order to allow for traffic or recreational conditions, would have been valid (Opinion of Circuit Court of Appeals, IV R. 115-116).

The Circuit Court, however, evidently considered that an ordinance which by its terms contemplates the refusal of a permit merely because, in the opinion of the licensing official, disorder is probable, without regard to a city's ability to prevent or suppress the disorder, is void *per se*.

We suggest that the view to be taken of this question of the constitutionality of the ordinance on its face, may depend upon the construction given to it. The ordinance may be held to mean (as the Circuit Court apparently assumed it must be interpreted) that the Director of Public

Safety may properly refuse a license merely because he is apprehensive of disorder, *without regard to whether such disorder can be prevented or suppressed by proper police protection.* To illustrate, the ordinance might be construed as if it read as follows:

> 3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all the facts and circumstances pertinent to said application, *he believes that the proposed meeting would tend to cause* riots, disturbances or disorderly assemblage.

We agree that upon such a construction the ordinance is void on its face. Endorsement of such a test would mean that the licensing official on merely receiving such a notice, and believing that it had foundation, could justifiably refuse the permit, without even inquiring as to the practicability of invoking sufficient police protection to meet the threat. In practice this would mean that whether or not a particular meeting should be held would be determined by the fiat of any group that did not desire to have the meeting held and was willing to threaten disorder in order to prevent it,—at least whenever the licensing official was impressed by the threat. To uphold the ordinance, so construed, would, it seems plain, be a negation of free speech and assembly.

There are, however, other possible constructions of the ordinance. For example, it might possibly be interpreted to mean that a permit shall be refused only where after investigation and inquiry the licensing official reasonably believes that refusal of the permit is the *only* method of preventing disorder *of so serious a nature as to be beyond*

control. To illustrate, the ordinance construed in this sense might have been expressed as follows:

> 3. The Director of Public Safety is hereby authorized to refuse to issue said permit *for the time being* when, after investigation of all the facts and circumstances pertinent to said application, he reasonably believes *on the basis of substantial evidence,* that such refusal is *necessary* for the purpose of preventing riots, disturbances or disorderly assemblage *of so serious a character as to be beyond control.*

Supporting such a possible construction is the principle that an enactment will, if possible, be construed so as to avoid conflict with a constitutional provision. *Crowell* v. *Benson,* 285 U. S. 22, 62 (1932), and cases there cited; *Wright* v. *Vinton Branch,* 300 U. S. 440, 461 (1937).

We recognize that it would be going a long way to read into the ordinance such qualifications as are set forth in the foregoing illustration. Moreover, even under such a construction it would still be open to question whether the ordinance would be constitutional on its face. The argument for its constitutionality would be that it is reasonable to allow denial of a permit as a necessary means of preventing rioting so serious as to be uncontrollable, having in mind that (except in case of outright insurrection) such denial would amount only to a postponement pending arrival of the militia or other forces necessary to protect the meeting. The contrary argument would be that, even when so construed, the ordinance would empower an administrative official to impose a previous restraint upon a meeting merely in anticipation of an uncontrollable riot that in fact might not occur. In support of such a contention, it can be argued that the instances in

which the police force of a city, properly warned and organized, would be unable to suppress any attempted disorder at a public meeting would be so rare as to furnish no justification for arming any official with power to pass judgment *in advance* to the effect that the police force of the city would be unable to cope with the situation.

IV.

A city cannot constitutionally close both its streets and its parks to public meetings. In view of the importance of open air meetings as a means for public discussion, some provision must be made for such meetings at reasonable times and places.

(1) Analysis of the decree of the District Court in respect of public meetings, and of its modification by the Circuit Court of Appeals.

It is important to analyze the precise effect of the District Court's decree with reference to meetings in streets and parks, and the effect of the enlargement of the decree by the Circuit Court. The District Court decreed in substance that so long as a city pursues the policy of permitting *some* street meetings, it must apply such policy without discrimination. On the other hand, the effect of the decree, by implication at least, was that there is no constitutional objection to a *total* closing of all the streets of a city to all meetings. See Decree, paragraph B, 4 (d). (IV R. 139.)

With reference to parks dedicated to general public uses, however, the decree of the District Court provided in substance that the city *must* open them for all public meetings at reasonable times and places and must pro-

vide proper police protection to prevent disturbances. See Decree, paragraph B, 4 (a), (b). (IV R. 138.)

The Circuit Court did not disturb the decree in so far as it deals with the parks. But by removing certain qualifying language from Paragraph B, 4 (d), the Circuit Court broadened it so as in effect to forbid the total closing of the streets to public meetings, instead of merely forbidding discrimination against the plaintiffs in the issuance of permits to meet there. In other words, the Circuit Court held in effect that the District Court should have dealt with the problem of streets in substantially the same way as the problem of parks.[8]

(2) The importance of outdoor meetings as a medium of public discussion.

We desire to stress the importance of open-air meetings as a means for public discussion and education. Outdoor public assemblies have a special function in the field of free expression that is fulfilled by no other medium. It is true that the press continues as a major vehicle of public discussion and that the new medium of the radio occupies a large part of the field. Yet it is also true that the open-air meeting still fills a major role, and is indispensable in giving free public debate its traditional scope. For this there are a number of reasons.

The outdoor meeting is especially well adapted to the promotion of unpopular causes, since such causes are likely to command little financial support and therefore must

[8] Although plaintiffs took no cross-appeal from the decision of the trial court, and therefore did not urge that the decree be modified, the Circuit Court of Appeals plainly had power to make a modification on its own motion in plaintiff's favor. See *Langnes v. Green*, 282 U. S. 531, 536-538 (1931).

often be promoted by persons who do not have the financial means to "hire a hall" or purchase time on the radio.

Moreover, the outdoor public meeting forms part of the tradition of American life. The Lincoln-Douglas debates were held in the open and notwithstanding the development of the radio, it still remains true that a large part of our political, economic and social discussion goes on in outdoor meetings. Such meetings in public places are free not only to the speakers but to their audiences. Especially in summer, it is easier in many communities to attract an audience at an open-air meeting than in any other way. Outdoor meetings can be held in convenient neighborhoods so that long journeys to meeting halls are not required. It is worthy of note also that, offsetting the competition of the radio, other modern devices have widened the scope of the open-air meeting. The amplifier of the human voice enables a speaker to address several times as many people as a generation ago; and the development of the sound-truck has also been of importance. Nothing, therefore, could be more fallacious than to assume that the open-air meeting is now, or at any foreseeable time will be, outmoded as a major medium for public discussion and the formation of public opinion in the United States.

The informal character of the outdoor meeting is often of advantage in developing questions and answers—one of the best ways of forming public opinion. For this and the other reasons just mentioned it may fairly be said that the outdoor meeting is the most *democratic* forum of public expression.

We stress these considerations because no less an issue is here involved than the constitutional power of a city to suppress, as a practical matter, substantially all outdoor

public discussion within its limits. It is because such a policy would cut off one of the most vital and important means of public discussion that it would clearly "abridge" the rights of free speech and assembly guaranteed by the Constitution.

(3) Discussion of a city's duty to provide sites for open-air meetings.

a. *The underlying problem.* It is important to recognize that *as a practical matter* a city has a virtual monopoly of every open space at which a considerable outdoor meeting can be held. At least it has a practical monopoly of all such places that are available for public use and that would not need to be hired, because vacant private land in cities has become scarce and expensive. If, therefore, it should be held that a city can constitutionally close *both* its streets and its parks entirely to public meetings (so that every foot of every public street and of every public park, irrespective of conditions and suitability, would be made forbidden ground), the practical result would be to make virtually impossible any open-air meetings in any large city. The effect would be to cut off a means of public discussion and education that, as above stated, has been of vast consequence to the American people. Such a result would, it seems to us, amount to an unconsitutional abridgement of the rights of free speech and assembly. It follows, we contend, that a city *must* make some reasonable provision for the holding of outdoor public meetings.

The question then arises as to the ways and means whereby the basic objective of protecting the right of public assembly in cities can be achieved. The decree, as expanded by the Circuit Court, does this by forbidding the

total closing of *either* the streets or the parks to public meetings, subject only to the reasonable requirements of traffic in the one case and of recreation in the other.

We regard it as rather unfortunate that the lower courts apparently considered the parks and streets as involving separate problems, to be dealt with by separate injunctive commands independent of one another. In our view, a more statesmanlike and workable approach would be to regard the availability of streets and parks as but two parts of a single problem *which should be handled as a unit.* This problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks, with its other basic obligation to provide adequate places for public discussion in order to safeguard the guaranteed right of public assembly.

Approached from this broad standpoint, the problem could be met in a variety of ways, depending upon the particular conditions in a particular city at a particular time. Thus, it would seem that if a city adopted the policy of providing an adequate number of adequate places similar to Hyde Park in London, to be used exclusively for outdoor meetings, it might constitutionally close both its streets and ordinary parks to such meetings if, in the judgment of the city authorities, the requirements of traffic and recreation made this advisable. It is true that under usual conditions in an average large city it is perfectly feasible to find some suitable places for meetings even in streets; yet it is conceivable that under extraordinary conditions, the necessities of traffic would make all the streets unsuitable, at least temporarily. In another city it might be the parks that were unsuitable under certain conditions and at particular times,

while in that city proper places for meetings could readily be provided in squares or wide streets. It may well develop that the most feasible solution of this problem in many cities will be the establishment of "Hyde Parks" of sufficient number and so located as to provide effectively for free outdoor public discussion.

With these considerations in mind, we suggest that the sound constitutional doctrine which should control this problem is that a city *must* in *some* adequate manner provide places on its property for public meetings—as distinguished from a more rigid doctrine that would *compel* both its streets and its ordinary parks to be made available. Under such a doctrine, the basic constitutional requirement of protecting freedom of assembly would be fulfilled, but without imposing rigid specific requirements as to either streets or parks that might in practice prove difficult or unworkable.

Thus, while we stress the vital importance of upholding the principle that a city must safeguard the right of assembly in open-air meetings, we also suggest that *in respect of ways and means* to that end, the rule should be reasonably flexible.

b. *Form of the decree.* Of both the District Court's decree and the enlarged decree, it may be said that they fully recognize the underlying principle that some adequate places for public meetings must be provided. The Circuit Court merely went a step beyond the trial court in defining the measure of the provision that should be made to make good the constitutional guaranty of free assembly.

We have indicated the view that the situation might have been better met by a decree more broadly and flexibly

framed. But we are concerned with the fundamental proposition that the constitutional right to hold public meetings should be vindicated and safeguarded; and the essential point is that whatever decree is made should be fully sufficient to insure adequate facilities for outdoor meetings and sufficient to prevent the sort of arbitrary discrimination which this record discloses.

(4) Davis v. Massachusetts, 167 U. S. 43, relied upon by defendants, is distinguishable in respect of its facts and the issue involved. Moreover, its rationale is incompatible with more recent decisions of this Court. A city does not control its parks like a private owner of property, but holds them for public purposes including public meetings.

It is true that forty-two years ago (long before the above mentioned *Gitlow* and other cases had brought the guarantees of the First Amendment within the purview of the Fourteenth), the Supreme Court made a decision on the subject of speaking in parks without a permit, which the defendants claim is favorable to their contention in the case at bar. *Davis* v. *Massachusetts, supra.*

In that case a Boston ordinance forbade speaking on the Common without a permit. Davis considered that the city had no right to require permits for religious services on the Common, which had formerly been unrestricted. Accordingly he proceeded to preach without asking for a permit. His conviction for violating the ordinance was upheld by the highest court of Massachusetts in *Commonwealth* v. *Davis,* 162 Mass. 510, 39 N. E. 113 (1895). Mr. Justice Holmes, then on the Massachusetts court, wrote the opinion. Davis carried the case to the Supreme Court of the United States where the conviction was sustained. We believe, however, (1) that this case is distinguishable in

respect of the issue involved, and (2) that the rationale of the case is opposed to the doctrine of later decisions of this Court.

(1) The facts in the *Davis* case were quite different from those in the case at bar. Davis spoke without a permit and without applying for one, thus completely disregarding the Boston ordinance. The present plaintiffs have, however, not disobeyed the Jersey City ordinance. They sought a permit in accordance with its terms, and it was only when that permit was refused that they took legal proceedings to modify the manner in which the city officials were administering the ordinance. Therefore, although the *Davis* case might have been cited in support of the punishment of the present plaintiffs if they had spoken without a permit, that case did not deal with the question whether an applicant for permission to speak was rightfully denied a permit, which is the issue before this Court.

Furthermore, the *Davis* case did not involve any contention that the *administration* of the ordinance was discriminatory or otherwise unconstitutional. In the case at bar, the record shows discriminatory administration of the ordinance through the refusal of permits to persons who represent unpopular causes, while permits were in the same period granted to others. It shows also that the Director of Public Safety denied permits on a premise inconsistent with preservation of the rights of free speech and assembly, viz., that a threat of disorder justified such denial without reference to the controllability of the threatened disorder.

The reasonableness of a requirement that a permit be applied for where the ordinance is not void on its face was

recognized in *Smith* v. *Cahoon*, 283 U. S. 553 (1931), and in *Lovell* v. *Griffin* (at p. 452), *supra*. That requirement was not complied with by Davis. But in this case the permits were duly applied for; and there is a question here as to the unconstitutional *administration* of the ordinance by reason of the arbitrary and discriminatory conduct of the defendant officials. This is a feature which was in no way involved in the *Davis* case.

Finally, the *Davis* case was decided long before this Court had declared the modern doctrine of protection of liberty of speech and assembly against state and municipal restrictions. In the opinion in the *Davis* case it will be observed that there is virtually no discussion of such liberties. Davis asserted that he had some kind of property in the Common, of which the ordinance deprived him, and Mr. Justice White easily disposed of this claim. Since the state of the authorities in 1897 gave very little indication that freedom of speech and assembly were protected at all by the Fourteenth Amendment, what the Court said in the *Davis* case needs to be critically re-examined in the light of such modern decisions as *Lovell* v. *Griffin* and *De Jonge* v. *Oregon* (*supra*). See Section II of this Brief.

(2) Although the result of the outmoded *Davis* case is distinguishable, the defendants may rely on some of its language as favorable to their contention in the case at bar. Thus Mr. Justice Holmes said (162 Mass. at p. 511, 39 N. E. at p. 113):

> "For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietary rights

> interfere, the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the less step of limiting the public use to certain purposes."

Mr. Justice White, besides quoting Mr. Justice Holmes as above, also said (167 U. S. at p. 48):

> "The right to absolutely exclude all right to use, necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser."[9]

Thus, Mr. Justice White's reasoning was in substance: (a) The city has title to the Common; (b) title to property involves the right to exclude all persons from it, there being no difference in this respect between public and private property; and (c) the "greater" power to exclude all persons unconditionally and in *all* circumstances, implies the "lesser" power to exclude in *any* circumstances.

Passing for the moment the first two steps, we submit that the third—the so-called doctrine of "greater and lesser powers"—has been repudiated in a number of more recent decisions of this Court from 1898 down to December, 1938.

Beginning with *Blake* v. *McClung*, 172 U. S. 239 (1898), the Court has developed the doctrine of so-called unconstitutional conditions, which, as the dissent of Mr. Justice

---

[9] Judge Bodine makes the same argument in the above mentioned New Jersey suit brought by Norman Thomas against the present defendants. *Thomas* v. *Casey*, 1 A. (2d) 866, 870 (1938). In his opinion Judge Bodine said:

> "He (Thomas) has no more right to speak in public places in that city, such as highways and parks, without permit than he has to invade a citizen's home without invitation."

Holmes pointed out in *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, 54 (1910), is logically incompatible with the doctrine of "greater and lesser powers." Thus although a state has the "greater" power to exclude from intrastate business all companies incorporated elsewhere, it does not possess the "lesser" power of admitting them on condition that they pay an otherwise unconstitutional tax, *Western Union Telegraph Co.* v. *Kansas, supra*, or agree to abstain from resort to the federal courts. *Terral* v. *Burke Construction Co.*, 257 U. S. 529 (1922).

The Court has not hesitated to hold unconstitutional even conditions placed by the State on the use of its own property. Thus, *Frost Trucking Co.* v. *Railroad Commission of California*, 271 U. S. 583 (1926), held invalid a state statute which required all public carriers to obtain certificates of convenience and necessity as a condition of using the public roads. Even more striking is *Missouri ex rel. Gaines* v. *Canada*, 59 Sup. Ct. 232, decided December 12, 1938, the most recent case in which the Court has declined to apply the doctrine of greater and lesser powers. The question there was whether a state may furnish law school facilities in a state university to white students while denying them to colored students. As the dissent said:

> "Under the opinion just announced, I presume she [the State of Missouri] may abandon her law school * * *."

And as the Chief Justice, speaking for the majority, stated:

> "The question here is not of a duty of the State to supply legal training; * * * but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right."

The Court held that, although the State and the State University which is its agency have the power to refuse to devote public property to use as a law school, they do not have the "lesser" power to allow it to be used by white law students only.

It is submitted, therefore, that the third step of Mr. Justice White's reasoning in the *Davis* case is no longer law in view of the authorities just cited. Therefore that decision offers no comfort to the defendants, so far as the finding of discriminatory administration is concerned.

In so far as the *Davis* case bears on the other issue of unconstitutional administration, viz., the denial of permits because of a mere threat of disorder without reference to controllability, its reasoning is likewise believed to be unsound. For in addition to the erroneous assumption that a greater power necessarily includes a lesser one, another essential error inheres in the second step of Mr. Justice White's reasoning, viz., in the assumption that a city "owns" its parks in the same sense and with the same rights as a private owner owns his real estate.

Despite the eminence of the judges who have used this argument, we submit that it is not a correct conception of the relation of a city to its parks in respect to their availability for public meetings. It is untenable to assert that a city "owns" its parks in the same way that a man owns his house, with the right to exclude or admit anyone he pleases. The parks are held for the public. A man's house is primarily for himself and his family, and if he chooses to admit strangers, that is his incidental right. But the primary purpose of a park is to provide generally for the use and recreation of the people. An essential difference between a city and the private owner is that the latter can

admit some outsiders and exclude others on any whimsical basis he wishes. But surely a city has no such right in respect of the parks. A city may regulate reasonably in this respect but may not arbitrarily discriminate. This does not mean that the city is unable to make any choices. Thus it can keep adults out of children's playgrounds. But it cannot keep out red headed children while admitting youthful blondes and brunettes, nor can it limit the park benches to members of one political party.

Accordingly, though it is doubtless true that a city can regulate its property in order to serve its public purposes, there is, we submit, a constitutional difference between reasonable regulation and arbitrary exclusion. In short, the right of a city in respect of its parks resembles other governmental rights in that it must be administered for the benefit of the public and not in an arbitrary manner. There are many different kinds of public benefits to be derived from parks, and one of the most important is the constitutional right of assembly therein. The parks are held by the city subject to this right. It can be regulated in a reasonable manner; it must not be denied. To the extent that the rationale of *Davis* v. *Massachusetts* is inconsistent with this doctrine, we submit that it is no longer good law.

The danger of the private ownership theory of public property, represented by *Davis* v. *Massachusetts*, becomes particularly impressive at a time like the present when acquisitions of large amounts of property are being made by government and it is carrying on enormous activities, such as those conducted by the Tennessee Valley Authority. If these properties can be administered with the arbitrary power to exclude anybody who happens to be disliked by officials or politically influential groups, then those who

oppose the governmental policies of the moment would find many aspects of their lives at the mercy of a property owner (nation, state or city), possessed of vast and arbitrary power. They could be shut out at the will of the executive or the legislature, not only from parks or libraries or museums, but from mailing or receiving letters; from purchasing electric current or water power or goods manufactured in government plants; from riding on municipal trolley cars or buses; from selling their products to the government or from doing work for it in fields where there might no longer be any other customer worth mentioning. A private owner can ordinarily admit whom he pleases, sell to whom he pleases, buy from whom he pleases. But surely, the Constitution does not confer upon government a similar uncontrolled choice.

The true analogy to government ownership of parks and other property dedicated to public uses is furnished by a public utility, which must give service to all so long as this is consistent with the performance of its functions. It can regulate, but not discriminate. It can refuse to deal with those who interfere with its functions or with other users of its service, or when the available services are exhausted. We already recognize this principle as applied to governmental substitutes for private utilities. Thus a municipal street railway can eject "drunks" and set a limit on overcrowding, but nobody contends that it can refuse to transport members of unpopular groups even if other passengers express a dislike for them.

In the same way, the parks can be regulated in a manner consistent with their purposes, one of the most important of which is the right of free assembly therein for public discussion at reasonable times and places. Disorderly per-

sons can be excluded, because they interfere with peaceable users of the parks like drunks in the municipal trolley car. Open-air meetings can be assigned to a particular park or a particular area, just as passengers can be assigned to particular seats or told to move away from the door. If all the available space is occupied and there is no more room for meetings, permits can stop, just as a full municipal street car can refuse to take on passengers. But we submit that law-abiding Democrats or Republicans or Communists or unionists or members of the American Civil Liberties Union can no more be constitutionally kept out of empty park spaces reasonably suitable for open-air meetings than they can be excluded from an empty municipal trolley car, or be refused current from a municipal power plant.

In sum, a city is required to furnish its municipal services to all, subject only to reasonable rules. Surely this principle is no less applicable when those services include the making available of space for open-air meetings, in pursuance of the right of assembly that is guaranteed by the Constitution of the United States.

The basis of the right of assembly is the substitution of the expression of opinion and belief by talk rather than force; and this means talk for all and by all.

Summary and Conclusion.

We have undertaken to show that the course of conduct of the defendant officials of Jersey City that is forbidden for the future by the decree, is violative of one of the most valuable and necessary American rights—the right of free discussion in open-air meetings held for lawful purposes.

The findings of fact show a deliberate policy of the Jersey City officials to discriminate against the C. I. O. and the American Civil Liberties Union and in one way or another to prevent the public expression of their ideas in Jersey City.

This suppression is sought to be justified under the plea of the maintenance of public order. But we have shown that the excuse is specious; that if allowed it would place precious rights of free speech and assembly at the mercy of any reckless faction; and that, as the decree provides, such threats of disorder as appear here must be met by providing police protection, to the end that the constitutional rights of Americans shall not be sacrificed to intimidation.

The suppression is also sought to be justified by invoking a decision of Mr. Justice White over forty years ago. *Davis* v. *Massachusetts, supra.* But we have shown that the case is different from the one at bar and further that the alleged implications of the decision are completely out of harmony with the whole modern trend of decision in the Supreme Court that has given a wide scope to the rights of free speech and assembly and set up strong safeguards against their impairment.

In conclusion, we wish to stress the denial of the right of assembly that is forbidden by the decree as *essentially a manifestation of intolerance.* Nothing can be clearer than that it was solely because the views of the C. I. O. and Civil Liberties Union and of their speakers were unacceptable to the authorities of Jersey City, that they took their drastic steps to deny to the plaintiffs the right to conduct the public meetings which they sought to hold.

It is because of the striking example of ruthless intolerance afforded by this case that it is so significant for the future of American civil rights. For tolerance is of the essence of the American system and of the American way of life—not only tolerance in matters of religion, but also tolerance in matters of political, economic and social belief; tolerance not only of views that we can approve, but also (as Mr. Justice Holmes said) of views that we hate; tolerance not only of views that accord with our interests but also of views that are inimical to our interests.

In the long run, a system of government and a way of life resting, as does ours, on the consent of the majority can survive only if we support tolerance and free discussion within wide limits. The law alone cannot instill that degree of tolerance upon which our institutions rest. Only education and a widespread understanding of the essentials of free government can do that. But the courts can, in concrete cases, aid in preserving free institutions by forbidding definite acts that suppress lawful free expression.

The present case is of that character. The plaintiffs were doing nothing more than to invoke their American constitutional right "peaceably to assemble." The findings of fact show a deliberate effort to suppress the exercise of that right. The grounds upon which the suppression is sought to be justified are specious and insufficient.

The Committee submits that the case calls for a decree that will enjoin the continuance of the arbitrary acts of the

defendants and afford full and effective protection to the constitutional right of assembly.

Respectfully submitted,

THE COMMITTEE ON THE BILL OF RIGHTS, OF THE AMERICAN BAR ASSOCIATION

DOUGLAS ARANT
(of the Alabama Bar)

ZECHARIAH CHAFEE, JR.
(of the Rhode Island Bar)

GRENVILLE CLARK, *Chairman*
(of the New York Bar)

OSMER C. FITTS
(of the Vermont Bar)

LLOYD K. GARRISON
(of the Wisconsin Bar)

GEORGE I. HAIGHT
(of the Illinois Bar)

MONTE M. LEMANN
(of the Louisiana Bar)

ROSS L. MALONE, JR.
(of the New Mexico Bar)

BURTON W. MUSSER
(of the Utah Bar)

JOHN FRANCIS NEYLAN
(of the California Bar)

JOSEPH A. PADWAY
(of the Wisconsin Bar)

CHARLES P. TAFT
(of the Ohio Bar)

The members of the Committee.

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 27 1939
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1938

No. 651

FRANK HAGUE, individually and as Mayor of Jersey City, *et al.*,

Petitioners,

against

COMMITTEE FOR INDUSTRIAL ORGANIZATION, AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF

MORRIS L. ERNST,
SPAULDING FRAZER,
Solicitors for Respondents.

SPAULDING FRAZER,
DAVID STOFFER,
LEE PRESSMAN,
MORRIS L. ERNST,
BENJAMIN KAPLAN,
HARRIET F. PILPEL,
of Counsel.

INDEX

	PAGE
Statement	1
Opinions	2
Summary of the Matters Involved	2
Facts Conclusively Determined against Petitioners	2
Outline of Argument	3
Nature of Official Suppression in Jersey City	3
PART ONE: The Substantive Case	17
I. The provisions of the decree protecting "liberty of the person" are amply supported in fact and law	17
A. Exclusions and Removals	17
B. Unlawful Searches and Seizures	19
C. Persistent Interference by Petitioners with Respondents' Rights of Communication and Locomotion, all Without Arrest or Trial by Due Process of Law	21
1. "Molestation"	21
2. Interference with Peaceful Picketing	22
D. Findings, Conclusions and Injunction	23
E. The Pertinent Provisions of the Decree Are in Accord with Applicable and Controlling Law	24
1. As to Exclusions and Removals	24
2. As to Unlawful Searches and Seizures	27
3. As to Interferences and Restraints Imposed Upon Respondents Without Arrest and Trial by Due Process of Law	29
II. The provisions of the decree respecting circulars and placards are plainly correct. The municipal ordinances involved are void within the rule of Lovell v. City of Griffin	32
A. Circular Distribution	32
B. Display of Placards	35
C. Findings, Conclusions and Injunction	36
D. The Lovell Case Is Controlling	37
III. The holding of the Court below that the standard of anticipated disorder contained in the Jersey City ordinance as to public speaking is unconstitutional, is sound in law. The alternative independent holding that the ordinance, whether or not the standard is *per se* unconstitutional, has been unconstitutionally applied to the respondents, is likewise sound; the concurrent findings of arbitrary and discriminatory enforcement are supported by ample evidence	38

PAGE

The Ordinance 40

Rulings of the Circuit Court of Appeals and the District Court as to this Ordinance 40

A. The standard set up by the ordinance imposes a previous restraint and is void 42

1. Meaning of Previous Restraint 42

2. Near v. Minnesota and Like Cases Controlling 45

3. The Ordinance Not a General Police Power Regulation 51

4. Davis v. Massachusetts Is Not in Point Here, and In Any Event Does Not Represent Good Law Today 54

(a) Davis v. Massachusetts wholly distinguishable from the case at bar 55

(b) Even the precise holding of the Davis case no longer law 57

(c) A municipality may not prohibit the use of all public places for speaking purposes 59

The English Tradition 60

The American Tradition 62

Lovell case conclusive that there is a right to use the public places for speaking purposes 65

(d) Even if municipalities could validly bar all speaking in public places, they could not condition such speaking upon an invalid previous restraint 67

B. Viewed even as a general police regulation (as distinguished from a previous restraint prohibited under any circumstances), the ordinance is void because unreasonable in the light of the underlying facts 69

C. The Ordinance has been applied to the respondents in an arbitrary, unreasonable, discriminatory, and therefore unconstitutional manner 74

1. There Was No Reasonable Apprehension of Violence or Provocative Behavior on the Part of the Applicants for Meetings 75

2. There Was No Reasonable Apprehension that Those Who Chose to Attend the Meetings Would have Created Riot 81

3. Official Inspiration, Fomentation and Financing of Demonstrations of "Protest" 86

4. Outright Discrimination Apparent on the Face of the Record 92

5. The True Reason Why Permits Were Denied: the Applicants Are "Undesirable" 95

6. The Ordinance Has Been so Applied to and Enforced Against the Respondents as to Violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment 99

PAGE

PART TWO: Objections to Jurisdiction Refuted 101

I. The courts below had jurisdiction over the subject matter of the case 101

Representations Made by Petitioners at the Trial 101

Rulings Below on Jurisdiction 103

A. Jurisdiction existed under Section 24(1) of the Judicial Code 103

1. Both lower courts having found minimal amount as a fact, this Court will not ordinarily disturb the findings 103

2. The evidence below supports the lower courts' findings 106

(a) The value of the rights sought to be vindicated is the general criterion 107

(b) Value of civil rights 109

(c) "Property rights" 112

(d) Value in cases of repeated trespass and other torts 116

(e) The rule of aggregation to establish the minimum jurisdictional amount is also applicable 117

B. Jurisdiction existed under Section 24(14) and of the Judicial Code (civil rights) 121

1. Scope of Judicial Code, Section 24(14), and the cognate 8 U. S. C., Section 43 121

2. Petitioners' erroneous contention that the provisions of the Civil Rights Act cover only such rights protecetd by the Fourteenth Amendment as originated in or were "created" by provisions of the Constitution other than the Fourteenth Amendment itself—thus erroneously confining the provisions of the Civil Rights Act to so-called rights of National citizenship and unwarrantably reading the word "secured" in the Civil Rights Act as meaning "created" 127

C. Jurisdiction Existed Under Section 24(12) of the Judicial Code (conspiracy respecting civil rights) 142

II. Subsidiary Objections Refuted 148

A. All of petitioners' actions here enjoined were performed in their capacities as municipal officers, and constituted State action within the meaning of the Fourteenth Amendment and applicable laws of the United States 148

B. There is jurisdiction to grant ancillary relief 149

C. The status of respondents American Civil Liberties Union and unincorporated labor unions was correctly adjudged below 150

D. The decree is definite, practicable and enforceable 153

Conclusion: The decree under review should be affirmed 155

CASES CITED

	PAGE
Ah Fong, In re, 1 Fed. Cas., 213	26
Allgeyer v. Louisiana, 165 U. S. 578	126
American League of Friends of New Germany v. Eastmead, 116 N. J. Eq. 487	50
American Mercury, Inc. v. Chase, 13 F. (2d) 224	147
American Steel & Wire Co. v. Davis, 261 Fed. 800	26, 147
Anderson v. City of Wellington, 40 Kan. 173	53, 64
Anderson v. Myers, 182 Fed. 223, *aff'd*, 238 U. S. 368	127
Anderson v. Tedford, 85 So. 673 (Fla.)	63
Associated Press v. N. L. R. B., 301 U. S. 103	52
Barbier v. Connolly, 113 U. S. 27	133
Barry v. Edmunds, 116 U. S. 550	116
Barry v. Mercein, 5 How. 103	113
Beatty v. Gillbanks, 9 Q. B. D. 308	50
Beine, In re, 42 Fed. 545	147
Bohler v. Callaway, 267 U. S. 479	149
Borden's Farm Products Co. v. Baldwin, 293 U. S. 194	71
Broom v. Wood, 1 F. Supp. 134, *rev'd*. 287 U. S. 1	127
Butchers' Union, etc. v. Crescent City, etc. Co., 111 U. S. 746	133
Carroll v. United States, 267 U. S. 132	28
Casey v. American Civil Liberties Union, 100 F. (2d) 354	15, 119
Champion v. Ames, 188 U. S. 321	26
Chicago G. W. R. Co. v. Kendall, 266 U. S. 94	149
City of Bloomington v. Richardson, 38 Ill. App. 60	63
City of Chicago v. Trotter, 136 Ill. 430	64
City of Duquesne v. Fincke, 269 Pa. 112	57, 63
Cobbett's Case, 29 How. St. Trials 49	61
Colgate v. Harvey, 296 U. S. 404	25, 26, 134
Commonwealth v. Egan, 113 Pa. Super. Ct. 375	57
Concordia Fire Ins. Co. v. Illinois, 292 U. S. 535	100
County of Mobile v. Kimball, 102 U. S. 691	26
Crandall v. Nevada, 6 Wall. 35	25, 26, 132
Crane v. Johnson, 233 Fed. 334, *aff'd*, 242 U. S. 339	127
Davenport v. Cloverport, 72 Fed. 689	127
Davis v. Massachusetts, 167 U. S. 43	54, 55, 56, 57, 58, 59, 60, 63
Dearborn Pub. Co. v. Fitzgerald, 271 Fed. 479	49, 51, 147
DeJonge v. Oregon, 299 U. S. 353	6, 42, 43, 44, 48, 51, 134
Delafoile v. State, 54 N. J. L. 381	31
Dugan v. Bridges, 16 F. Supp. 694, *app. dism.*, 300 U. S. 684	127
Elrod v. Moss, 278 Fed. 123	28
Evenson v. Spaulding, 150 Fed. 517	109
Farson v. City of Chicago, 138 Fed. 184	127
Fidler v. Roberts, 41 F. (2d) 305	117
Fiske v. Kansas, 274 U. S. 380	126, 131, 134
Foster Fountain Packing Co. v. Haydel, 278 U. S. 1	68
Matter of Frasee, 63 Mich. 396	64
Frost v. Railroad Commission, 271 U. S. 583	67
Gage v. Pumpelly, 108 U. S. 164	105
Giles v. Harris, 189 U. S. 475	110, 127
Gitlow v. New York, 268 U. S. 652	51, 126, 131, 134, 137
Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U. S. 121	108
Gloucester v. Pennsylvania, 114 U. S. 196	26

PAGE

Go-Bart Importing Co. v. United States, 282 U. S. 344 28
Gobitis v. Minersville School District, 21 F. Supp. 581 137
Gouled v. United States, 255 U. S. 298 27
Greene v. Louisville and Inter R. Co., 244 U. S. 499 149
Grosjean v. American Press Co., 297 U. S. 233 ..... 43, 51, 138, 151, 152

Hague v. C. I. O. (instant case), 25 F. Supp. 127, *mod. and aff'd*, C. C. A. 3d, Jan. 26, 1939 ..... 2, *passim*
Hanover F. Ins. Co. v. Carr, 272 U. S. 494 68
Hansel v. Purnell, 1 F. (2d) 266, *cert. den.*, 266 U. S. 617 153
Healy v. Ratta, 292 U. S. 263 113
Herndon v. Lowry, 301 U. S. 242 43
Holt v. Indiana Manufacturing Co., 176 U. S. 68 ..... 127, 136, 137
Hudson County Committee v. Hague, N. J. Chancery, #117-203, Jan. 19, 1937 ..... 38, 50
Hurn v. Oursler, 289 U. S. 238 ..... 29, 149
Hynes v. Briggs, 41 Fed. 468 116

International News Service v. Associated Press, 248 U. S. 215 ..... 115, 119, 150
Iov .-Des Moines National Bank v. Bennett, 284 U. S. 239 152

Jackson, Ex parte, 96 U. S. 727 65

Katz v. Eldridge, 96 N. J. L. 382 29
Kentucky Finance Corp. v. Paramount Auto Exchange Corp., 262 U. S. 544 152
Kurtz v. Moffitt, 115 U. S. 487 113
Kvos v. Associated Press, 299 U. S. 269 150

Lane v. Penn R. R. Co., 78 N. J. L. 672 28
Lawless v. Duval County, 6 F. Supp. 303 127
Levering & Garrigues Co. v. Morrin, 289 U. S. 103 149
Lewis, Ex parte, 21 Q. B. D. 191 61
Liggett Co. v. Baldridge, 278 U. S. 105 ..... 134, 152
Liggett Co. v. Lee, 288 U. S. 517 152
Live-Stock, etc., Ass'n v. Crescent City, etc. Co., 1 Abb. (U. S.) 388 123
Local No. 7 B. M. P. I. U. v. Bowen, 278 Fed. 271 119
Local Union A. A. S. E. R. E. v. Joplin & P. R. Co., 287 Fed. 473 119
Lovell v. City of Griffin, 303 U. S. 444 ..... 6, 33, 35, 37, 42, 43, 51, 58, 63, 65, 134

Marcus Brown Holding Co. v. Pollak, 272 Fed. 137 ..... 25, 137
Maxwell v. Dow, 176 U. S. 581 126
McDaniel v. Traylor, 196 U. S. 415 119
McNichols v. Internat'l Typ. Union, 21 F. (2d) 497 111
Minneapolis & St. Louis Ry. v. Beckwith, 129 U. S. 26 133
Mugler v. Kansas, 123 U. S. 623 133

Near v. Minnesota, 283 U. S. 697 ..... 42, 45, 49, 51, 54, 57, 58, 134, 138
Nixon v. Herndon, 273 U. S. 536 ..... 110, 112, 127
Norris v. Alabama, 294 U. S. 587 148

O'Gorman & Young v. Hartford Fire Ins. Co., 282 U. S. 251 ..... 69, 71
Oscanyan v. Winchester Arms Co., 103 U. S. 261 102

Palko v. Connecticut, 302 U. S. 319 ..... 27, 43, 51, 69
Panama Ref. Co. v. Ryan, 293 U. S. 388 58

PAGE

Paramino Lumber Co. v. Marshall, 18 F. Supp. 645, aff'd, 95 (2d) 203, *cert. den.*, 83 L. Ed. 12 127
Pennsylvania R. System v. Pennsylvania R. Co., 267 U. S. 203, *aff'g* 1 F. (2d) 171 ..... 144, 145, 146
People ex rel. Doyle v. Atwell, 232 N. Y. 96 ..... 56, 63, 100
People ex rel. Gow v. Bingham, 57 N. Y. Misc. 66 31
People v. Smith, 263 N. Y. 255 ..... 56, 63
Phillips Petroleum Co. v. Jenkins, 297 U. S. 629 68
Phoenix L. Ins. Co. v. Bailey, 13 Wall. 616 147
Powell v. Alabama, 287 U. S. 45 ..... 31, 138
Powell v. Pennsylvania, 127 U. S. 678 133
Power Mfg. Co. v. Saunders, 274 U. S. 490 ..... 68, 152
Put-In-Bay Waterworks, L. & R. Co. v. Ryan, 181 U. S. 409 107

Radio Corp. of America v. Radio Engineering Lab., Inc., 293 U. S. 1 2
Ragsdale v. Rudick, 293 Fed. 182 116
Raymond v. Chicago Union Traction Co., 207 U. S. 20 148
R. v. Carlile, 6 C. & P. 636 61
Rich v. City of Naperville, 42 Ill. App. 222 63
Risty v. Chicago, R. I. & P. R. Co., 270 U. S. 378 105
Rocky Mountain Bell Tel. Co. v. Montana Federation of Labor, 156 Fed. 809 109
Rood v. Goodman, 83 F. (2d) 28 100
Royal Baking Powder Co. v. Emerson, 270 Fed. 429, *cert. den.*, 260 U. S. 752 147

Salander v. City of Tacoma, 208 Fed. 427 127
Schechter v. United States, 295 U. S. 495 58
Schlosser v. Welsh, 5 F. Supp. 993 127
Senn v. Tile Layers Protective Union, 301 U. S. 468 30
Shappirio v. Goldberg, 192 U. S. 232 105
Simpson v. Geary, 204 Fed. 507 127
Slaughter House Cases, 16 Wall. 36 ..... 129, 132, 133, 134, 135
Smithers v. Smith, 204 U. S. 632 107
Smith v. United States, 157 Fed. 721, *cert. den.*, 208 U. S. 618 139
Snyder v. Massachusetts, 291 U. S. 97 31
Southern Railroad Company v. Greene, 216 U. S. 400 152
Sovereign Camp, etc. v. O'Neill, 266 U. S. 292 120
Spies, Ex parte, 123 U. S. 131 126
State v. Butterworth, 104 N. J. L. 579 ..... 51, 62
State v. Coleman, 96 Conn. 190 63
State v. Condon, 40 N. J. L. J. 293 29
State ex rel. Garrabad v. Dering, 84 Wisc. 585 64
State v. Giberson, 99 N. J. L. 85 28
State Board of Health v. Diamond Mills Paper Co., 63 N. J. Eq. 111 138
Sterling v. Constantin, 287 U. S. 378 32
Stromberg v. California, 283 U. S. 359 ..... 51, 138
Sullivan v. Shaw, 6 F. Supp. 112 100
Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350 100
Swafford v. Templeton, 185 U. S. 487 110

Thomas v. Casey, 121 N. J. L. 185 51
Tri-City Central Trades Council v. American Steel Foundries, 238 Fed. 728, *mod.*, 257 U. S. 184 109
Troy Bank v. Whitehead, 222 U. S. 39 118
Truax v. Raich, 239 U. S. 33, *aff'g* 219 Fed. 273 ..... 11, 126, 138
Turner v. Turner, 16 How. 14 102
Twining v. New Jersey, 211 U. S. 78 25

PAGE

United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344 153
United States v. Adams, 26 F. (2d) 141, *app dism.*, 29 F. (2d) 541 32
United States v. Ballard, 12 F. Supp. 321 31
United States v. Commercial Credit Co., 286 U. S. 63 3
United States v. Cruikshank, 92 U. S. 542 129, 130, 134, 135
United States v. Hall, Fed. Cas. #15282 130, 131, 134, 135
United States v. Miller, 17 F. Supp. 65 25
United States v. O'Donnell, 303 U. S. 501 3
United States v. Patrick, 54 Fed. 338 25
United States v. Wheeler, 254 U. S. 281 134

Waldron v. Waldron, 156 U. S. 361 102
Wallace v. Ford, 21 F. Supp. 624 30
Wayne v. Venable, 260 Fed. 64 111
Weaver v. Palmer Bros. Co., 270 U. S. 402 134
Weeks v. United States, 232 U. S. 382 29
West Coast Hotel Company v. Parrish, 300 U. S. 379 152
Whitney v. California, 274 U. S. 357 43, 71, 73
Wiley v. Sinkler, 179 U. S. 58 110, 112
Williams v. Fears, 179 U. S. 270 25
Wisconsin Electric Co. v. Dumore Co., 35 F. (2d) 555, *cert. dism.*, 282 U. S. 813 102

Yick Wo v. Hopkins, 118 U. S. 356 100
Young, Ex parte, 209 U. S. 123 147, 148
Youngstown Bank v. Hughes, 106 U. S. 523 113

Zeigler v. Hopkins, 117 U. S. 683 105

STATUTES AND ORDINANCES CITED

Jersey City Ordinances:
Re circulars 32, *et seq.*
Re placards 35, *et seq.*
Re private meetings 38
Re public meetings 40, *et seq.*

New Jersey:
R. S. 40:48-1, 40:67-1, 40:72-3 148

United States:
Code of Laws—
Title 8, § 43 104, *et seq.*
Title 8, § 47(3) 121, *et seq.*
Title 18, § 51 (Crim. Code, § 19) 121, *et seq.*
Title 28, § 24 (1) (Jud. Code, § 41 [1]) 103, *et seq.*
Title 28, § 24 (12) (Jud. Code, § 41 [12]) 103, *et seq.*
Title 28, § 24 (14) (Jud. Code, § 41 [14]) 103, *et seq.*
Title 29, § 151, *et seq.* 114

Statutes at Large—
14 Stat. 27 122
16 Stat. 141 129
17 Stat. 13 122
36 Stat. 1092 123

PAGE

Revised Statutes of 1878—
R. S., § 563, ¶ 12 123
R. S., § 629, ¶ 16 123

RULES CITED

Rules of Civil Procedure:
Rule 17 (b) 153

AUTHORITIES CITED

Beard, 123 The Nation, p. 8 71
Blackstone, 4 Comm. 151, 152 44
Dicey, Law of the Constitution 61, 62
Editor and Publisher, Year Book for 1937 152
Funk & Wagnalls, New Standard Dictionary 138
Jennings, The Law and The Constitution 61
Paterson, Liberty of the Press, Speech and Public Worship 61, 62
Pound, "Liberty of Contract," 18 Yale L. J. 454 133
Warren, "The New Liberty under the Fourteenth Amendment," 39 Harv. L. R. 431 134
Willoughby, The Constitution 25
Yale Law Journal, Comment, "The Hague Injunction Proceedings," vol. 48, p. 257 (Dec. 1938) 24, 37

Supreme Court of the United States

October Term, 1938

No. 651

FRANK HAGUE, individually and as Mayor of Jersey City, *et al.*,

Petitioners,

against

COMMITTEE FOR INDUSTRIAL ORGANIZATION, AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF

Statement

The case is here upon writ of certiorari (respondents having joined in the prayer for the writ) to review the decree of the Third Circuit Court of Appeals entered on January 26, 1939 (4 R. 164*), affirming, with a modification in respondents' favor, the decree of the District Court for the District of New Jersey entered on November 7, 1938 (4 R. 136), which awarded comprehensive injunctive relief to the respondents, plaintiffs below, against petitioners, defendants below.

---

*The record pages are consecutively numbered through the first three volumes of the transcript and will be referred to as "R." Pages of the fourth volume will be referred to as "4 R.".

Opinions

The opinion of the District Court (CLARK, *D. J.*) is reported in 25 F. Supp. 127 (R. 72). The opinion of the majority of the Circuit Court of Appeals (BIGGS and MARIS, *C. JJ.*) is unreported; it appears at 4 R. 101. The opinion of DAVIS, *C. J.*, dissenting on the issue of public meetings, but concurring in other conclusions of the majority, appears at 4 R. 141.

Summary of the Matters Involved

A concise and accurate summary of the matters involved is contained in the majority opinion of the Circuit Court of Appeals, to which the Court is respectfully referred.

The facts will be described at greater length in the body of this brief.

Facts Conclusively Determined Against Petitioners

It is emphasized at this point, in order to focus attention upon the true issue at bar, that all matters of fact, including the matter of discrimination in the enforcement of the public meeting ordinance, have been twice determined against the petitioners by the courts below. The District Court, noting that petitioners rested at the close of respondents' case without introducing any affirmative evidence in their own behalf, stated in its opinion that there was no substantial conflict in the testimony (R. 74-5) and made detailed findings (4 R. 128). The Circuit Court of Appeals confirmed the findings in all respects (4 R. 108, 109, 110, 111, 119). Under the familiar "two court" rule, these concurrent findings will be accepted as true by this Court unless "clear error" is shown. *Radio Corp. of America* v. *Radio Engineering Lab., Inc.*, 293 U. S. 1, 6

(1934); *United States* v. *O'Donnell*, 303 U. S. 501, 508 (1938); *United States* v. *Commercial Credit Co.*, 286 U. S. 63, 67 (1932). No error is or can be shown by petitioners. Accordingly, the only issue at bar is whether the facts, as concurrently found, support the decree in law.

Petitioners in their "Statement of the Case" wholly ignore the findings and present an apocryphal résumé of the facts which is misleading in many particulars and departs from the record.

Outline of Argument

Respondents agree with the lines of reasoning adopted by the majority below. Resting upon that opinion as the distilled statement of their case, respondents shall, preliminarily, show from the record the nature of the conflict in Jersey City, stressing the mood and direction of official behavior resulting in the deprivations of which respondents complain in this action. They shall then develop the specific acts of suppression enjoined by the decree under review, showing in each case the basis in law for the pertinent injunctive provisions (Part One). The balance of the brief will be devoted to refuting the petitioners' contentions as to jurisdiction (Part Two).

Nature of Official Suppression in Jersey City

Jersey City is an industrial center from which the sweatshop has not yet been banished (R. 858-71, 1295-1305).

The doctrine taught by labor organizations is that such conditions can be removed and the general standards of employment raised by the confederation of working men and women for the purpose of collective bargaining and other mutual aid and protection. This doctrine the respondent labor organizations and individual labor organizers, pursuing their normal objectives (see Finding B-1)

and regular callings (A-1), undertook to spread in the Jersey City area. Exhibit P-1 (one of the handbills confiscated by petitioners) is an example of respondents' preachment.

The propagation of any idea is a traffic necessarily involving the exercise of certain elementary human rights. Respondents acted in the belief that they had those rights in Jersey City as elsewhere in the United States—among others, the right to enter the town, walk about on the streets and converse with persons willing to be spoken to; the right to be free of groundless molestation by the police; the right to be secure in their persons and personal belongings against unreasonable search and seizure; the right to carry their message to the public by means of the written word, through circulars and placards; the right to assemble for discussion and debate in the public places of the City, there to petition, if need be, for redress of grievances. In sum, respondents thought they could exercise in Jersey City the minimal civil rights secured against invasion by the State and Federal Constitutions and laws of the United States.

They were mistaken. Although Mayor Hague himself concedes that within the period covered by this case respondent C. I. O. and its affiliated unions have used no "rough ways" of organizing (R. 1183)—a concession fortified by concurrent findings absolving respondents of any unlawful purpose or illegal behavior (Findings B-4, B-5)—the record is overwhelming that petitioners, the principal officials of Jersey City, effectively deprived respondents of the whole category of civil liberties and succeeded in enforcing a cloture upon them which in scope and intensity is perhaps unparalleled in the modern history of official suppression in this country. The effect was as intended; the official policy frustrated respondents' organizational work (see, *e. g.*, R. 961).

Respondent American Civil Liberties Union, deeming the policies of the City authorities a threat to democratic

processes, and pursuing its stated purpose of defending against abridgment of civil rights (B-2), soon came to the aid of the other respondents, among other ways by attempting to hold private and public meetings in Jersey City at which the controversy could be discussed. The City authorities thereupon suppressed A. C. L. U. as they had suppressed the other respondents. And during the period under review they have similarly suppressed, by every means at their command, any and all organizations, however diverse in character—ranging from the Catholic Workers to the American Whig-Chiosophic Society of Princeton University—which seemed to them to be connected in sympathy or motive with either C. I. O. or A. C. L. U. The suppression has continued without material abatement and will go on unless stopped by mandate of this Court.

Particular acts of suppression will be classified in the course of this brief for convenience of analysis; it is, however, important to remember that, as concurrently found by the courts below, all these acts were integral to a *"deliberate policy"* (Findings C-1, D-1, circulars, D-1, placards, E-1; R. 75; 4 R. 107) and were activated by a single motive. The case is tied together and should be viewed as a whole. In considering, for instance, whether petitioners exercised an honest and reasonable judgment in denying respondents the right to hold public meetings under the pertinent ordinance, it may be wise to recall that the petitioners had previously caused these respondents to be "deported", manhandled and abused and had discriminated against them in the enforcement of other ordinances. That these latter deprivations were without shadow of authority in law or justification in fact is now conceded by the petitioners—and was likewise conceded by Judge Davis. This Court may well judge whether a

group of officials who singled out respondents for unlawful suppression in these ways would stop short of suppressing them unlawfully in respect of public meetings. Petitioners' admission in this Court of the substantive illegality of their acts in all respects except that relating to public meetings carries its own invidious implication; they hope by that means to exclude from consideration the background of suppression against which the issue of public meetings assumes true color and perspective. Petitioners' effort should not succeed.

These circumstances, namely, that the blockade on civil liberties in Jersey City is pervasive and thorough, and that it results from a unified and deliberate policy, for the most part not only openly avowed but brazenly flaunted, are the notable features of the case and the measure of its peculiar significance in the American scene.

Prior cases in this Court have indicated sporadic violation of some of the civil rights in different sections of the country (e. g., *Lovell* v. *City of Griffin*, 303 U. S. 444 [1938]; *De Jonge* v. *Oregon*, 299 U. S. 353 [1937]). No prior case has presented, as does this case, the obliteration of virtually all the major civil rights of whole groups of people in a single community.

In prior cases the motive force behind the suppression may have been obscure. In this case the force is shown of record with great clarity and abundance of circumstantial detail.

That force is the officialdom of Jersey City, which has for many years held absolute power—power that derives not only from the authority of elective and appointive office, but from many extra-legal sources. The power is paternalistic and lays claim to a certain arrogant omniscience: it decides whether a given idea is or is not the kind of idea that ought to be disseminated in Jersey City;

if the answer is no, it proceeds with efficiency and despatch to prevent its dissemination.* And to this end it rallies an oversize police force, an efficient political machine, and a host of subservient organizations that must do its bidding or suffer the consequences of official wrath. The power has devious ways of causing its own evocation: thus it foments and inspires a "protest" from the "public" against the respondents or any other group fixed upon in advance as "undesirable"; it then proceeds, ostensibly on the basis of the "protest," to eliminate the "undesirable." The parallel between this process and those current in the despotisms abroad is too plain to be labored.

Frank Hague is the symbol of official power in Jersey City and deserves study as such.

"The evidence is uncontrovertible," said the Circuit Court of Appeals, "that he [Hague] was the spearhead of the movement to keep the [respondent] labor groups out of Jersey City" (4 R. 105).

Hague has been Mayor of Jersey City for twenty-four years (R. 1030). As Mayor he has general supervisory power over all City departments (R. 1031), and "by his admission and in fact the policies of these departments, including the policies of the department of public safety, are his policies" (Finding A-3; R. 1031-2).

He is moreover the active head of the dominant political party in Hudson County (R. 1031), and can testify proudly that he "raised" every one of the leaders of his twelve ward clubs in Jersey City (R. 1066)—all on the public payroll excepting one, who turns out to be a contractor. "I suppose he finds it more profitable without a position" (R. 1065). "We take good care of them" (*id.*).

The boss is sensible of his extra-legal power and not averse to making use of it. The record shows—to take

* See Judge CLARK's opinion on this point at R. 75-6.

one suggestive instance—that respondents were unable to hire a single suitable private hall in Jersey City after November, 1937, although the most comprehensive explorations were made (R. 324-9, 342-3, 429-35, 246-57, 484-8, 912-6, 930-1, 954). Hague admitted and explained the embargo. "I do not approve of un-American groups coming into Jersey City. That is clearly demonstrated by my attitude" (R. 1075). Knowing that, said Hague, a hall owner would feel that he was not "working within the proper scope" if he rented his hall to the respondents; and, if he did not work within the "proper scope," he might be embarrassed in the "little minor affairs" that concerned him at the City Hall (R. 1076-7)—in plain English, he would be beleaguered with denial of liquor licenses, building law violations, and the like. And so, "If they find I am in a controversy," hall owners deny halls "just automatically"; they "would not endeavor to offend the officials of Jersey City, knowing that" (R. 1081). Reminded of a prior case where a proprietor rashly sought to rent to an "undesirable" organization, and succeeded only in having his building declared unsafe, the Mayor cheerfully admitted, "'any port in a storm,' Counselor" (R. 1129).

The sum of Hague's influence was expressed by him in the phrase "I am the law." When questioned about that pronouncement, he agreed that "in the daily functioning of the government of Jersey City" it "is to all practical intents and purposes true" (R. 1250), and clung to substantially that view despite objections of his own counsel, protesting only against the phrase—the "idea of you injecting 'I am the law'" (R. 1251).

There is no doubt, then, that Hague is a formidable enemy. Having decided that respondents were "undesirable", "un-American" and "Red", he used against them all the weapons in his considerable armory. His function

all along, he said, was to "engineer" and "advise" as occasion might warrant (R. 1074). He was working "day and night" (*id.*). Here is a sketch of his activities in Hague's own words (R. 1074, 1075):

> "A. There was nothing on my part other than to engineer or try to advise whenever the occasion would warrant it; the police was handling the law and order side of the question and the people was resenting the invasion and the conduct of these people and naturally my instructions to the various groups, that is, the officials, was that they perform their duty as best they could."
>
> • • • • • • •
>
> "Q. Yes, I would like to get a general picture of what you have done. A. My public address at this large drive was one individual act; my conferences with the various heads of the various departments that has supervision over these disorderly conditions that may arise is two, and my complimentary remarks to the Chamber of Commerce and to all the other civil bodies is three, and I think that is sufficient."

This résumé is modest indeed.

We pass the police ministrations on "the law and order side of the question"—characterized by the court below as "in gross violation of the civil rights of the persons concerned" (4 R. 104), and glance briefly at why "the people was resenting the invasion and the conduct of these people."

C. I. O. applies by letter dated December 23 for a permit to hold a meeting on December 29 or 30 (R. 33-34).* The Director of Public Safety usually acts on such ap-

---

*A. C. L. U. had previously applied for a permit by letter dated December 17 (R. 27 ff.). Petitioner Casey temporized with this application until after the last date specified therein for the meeting, asking impertinent and irrelevant questions (*id.*, R. 641-6, 650-3). Meanwhile "protests" were being fomented as described in the text.

plications within three days (R. 1058-9).* In this instance, however, he does not respond until December 27, and then says merely that he will make "prompt investigation" (R. 35). The reason for the delay is by no means recondite.

December 26, Hague addresses the people concerning the national advertising campaign launched by the City to attract industry, and comments in relatively restrained tones concerning C. I. O. (Exh. P-42):

> "* * * Their [C. I. O.] battle cry is to crush Hague because he has the courage to prevent them from gaining a foothold in Jersey City. That is the real purpose behind the C. I. O. movement in Jersey City. * * *
>
> "If the people of my city believe in me, as I know they do, all I ask is that the people of Jersey City aid me in my efforts to obstruct this lawless element, whose only objective is to crush by terrorism; whose motive is to force itself upon our city for the purpose of destroying life and property by violence. * * *"

December 28, while Casey is presumably investigating, an "Important Notice," subscribed "Message from Mayor's Office," is circulated among veterans, calling for attendance at a meeting that night (Exh. P-33). Hague says the message "came from the veterans" but could reasonably have been assumed to be what it claimed to be "because of my activities in this movement"; "we approved of everything now; we are not shirking any of that" (R. 1063). The meeting is held and results in a resolution of "protest",† the resolution is annexed to Casey's letter of December 30 denying the C. I. O. application and is stated to be a reason for the denial (R.

* The ordinance provides that application for a permit must be lodged at least three days in advance of the proposed meeting.

† Most of the signers of the "protest" are political associates of Hague or on the payroll (R. 1232-3). Hugh A. Kelly, chairman of the meeting, is secretary to Governor Moore (R. 1066).

38-44).* Respondents' counsel correctly summarized the situation when he wrote Casey on January 3 (R. 45):

> "Your letter * * * is very illuminating as to the nature of the investigation undertaken by you. Such an investigation concededly takes time. *Even a perfectly functioning organization requires at least one day to foment a mass-meeting.* * * *" (†)

January 6, a monster mass meeting is held in the City armory. The Jersey Journal of the same date publishes a full page "Proclamation" sub-titled "Mayor Hague's Appeal to the People," signed by the Mayor and attested by the City Clerk, reading in part as follows (Exh. P-44):

> "This meeting called by the Jersey City Chamber of Commerce and allied civic organizations will show to the nation that the people of the city are behind me solidly in my efforts to keep the red army of the invaders, hiding behind the mask of the C. I. O., out of Jersey City. Your continued presence until the conclusion of this rally is necessary to serve notice upon the whole country that I have the support of all of the people of Jersey City in my efforts to keep our city free from this menace.
>
> *"Be present and please do not leave until the end of the meeting at ten-thirty o'clock"* (Emphasis in original).

Printed post cards are sent out by the leaders of ward clubs soliciting attendance and promising free transportation to and from the meeting (Exh. P-34).§ The Mayor admits he edited or corrected the cards (R. 1070, 1075). The principal attraction of the meeting is Hague himself who, in the concluding speech, thanks the populace for "this ex-

---

* The letter itself indicates that action was withheld to await the meeting.

† Italics in quotations ours unless otherwise indicated.

§ Exh. P-34, post card sent by Seventh Ward Club, is signed by Eugene Ertle. Ertle is City Clerk and attested the "Proclamation", P-44.

pression of their loyalty and support in my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization" (Exh. P-45). Director Casey was present at the meeting (R. 656).

January 12, the Mayor addresses a Chamber of Commerce dinner, unqualifiedly admitting concert among the petitioners in deliberately suppressing the respondents, and continuing the verbal onslaught (Exh. P-43):

> "* * * It was my duty, as I saw it, to notify the Commissioner of Public Safety that this invasion must not take place. We met them when they entered Jersey City and escorted them to the city lines. * * *
>
> "I want to tell you that as long as I am Mayor of this city, I will exert every ounce of law that is invested in me to drive this radical element out of our city. * * *
>
> "Gentlemen, * * * we stopped them. Not only did we stop them, but we locked them up. * * *
>
> "* * * So long as I am Mayor of Jersey City the great industries which provide livelihoods for our citizens will not be invaded and destroyed.
>
> "* * * As soon as they begin to shout about 'free speech,' and 'free press' and 'civil rights' and 'constitutional rights,' I know they are Communists, * * *"

As lately as June 3, while this very case is at trial, Hague again publishes an "Appeal to the People," urging cooperation in a "patriotic parade" (Exh. P-46):

> "Those of our people who cannot parade are invited to come and stand on the sidelines with an American Flag which will be supplied by the Committee of Veterans. This issue will determine whether Communism or Americanism will prevail in Jersey City. Your presence will be notice to the whole country that Jersey City is one of the greatest American cities in the Nation."

Of these appeals, manifestly calculated to arouse prejudice, Hague says (R. 1073):

> "A. Well, of course, in a movement of this character, particularly of such great importance that one who is the official head his principal desire is to have cooperation of the whole community, the people in general on every occasion that I have ever called upon the people of our city they have responded, and I was then thanking them for their presence, in the call to the people of Jersey City to present themselves and by their presence file a protest and to stamp their approval of the conduct of their public officials and of the civic bodies."

Hague's zeal indeed went so far that he contributed "several hundred dollars, I think, more or less, not much" to the various public manifestations purporting to be spontaneous outbursts of antagonism to the respondents (R. 1359).

Upon the record as a whole, of which the foregoing is illustrative, the Circuit Court of Appeals, after commenting on evidence that petitioners "inspired at least some of these protests" (4 R. 105), very aptly said, "*In other words, Mayor Hague and his associates, reversing the usual procedure, troubled the waters in order to fish in them*" (4 R. 115). And the waters, once troubled, are supposed to stay so indefinitely; for Hague holds (R. 1360-3) that "protests," once lodged, continue in effect and may be a sufficient ground for denying application for public meetings *until revoked by those who filed them!* This official *dictum* naturally solves the vexatious problem of dealing with "undesirables" for all time. "Protests" are immortal.

Petitioners' unprovoked assault on the respondents was justified in their own mind by a simple philosophy—that "undesirables" have *no rights* (*e. g.*, R. 1367). "The record," said the Circuit Court of Appeals, "shows that [respondents] and their sympathizers were not permitted

to speak *because they were deemed undesirables by the city authorities.* The cries of impending riot raised by the [petitioners] are not candid" (4 R. 115). It need hardly be pointed out that their definition of "undesirables", "Reds", etc., leaves something to be desired in the way of logical exactitude.

Initially counsel for petitioners followed the Mayor's lead and took the position that if it could be shown that the respondents were in some way associated with "Reds", that might be offered, without more, as justification for their suppression. Early in the trial, indeed, counsel promised in sweeping terms that such a line of defense would be presented (R. 471). But petitioners chose to rest after respondents had closed their case, offered no affirmative proof on their own behalf although they were several times invited to do so by the District Court, and introduced not a scintilla of evidence probative of the respondents' "Redness". The District Court found to the contrary that respondents' purposes "are in the letter and spirit of our Constitution and laws," and that there was no competent proof that respondents have ever acted in a subversive manner (Findings B-4, B-5).

Being unable to prove respondents' subversiveness as a matter of fact, petitioners sought to use a suspicion of it in lieu of proof. Thus on cross examination of respondents' witnesses, notably Mayor Hague, petitioners offered as their own exhibits a sheaf of clippings from newspapers, pamphlets and reports which, they said, formed the basis of petitioners' *"state of mind"* or *belief* that respondents were subversive (Exhs. 3, D-9-11, 14, 16-27). The exhibits were received in evidence for this limited purpose (R. 1590 ff; R. 1429, 1416, 1433). Although petitioners are well aware of this, they still cavalierly refer to the exhibits as proof of the ultimate facts. Their testimonial strength will be appreciated when it is considered that at least an equivalent number of clippings could be gathered saying precisely the opposite—and

doubtless petitioners read those clippings as well as the ones that were offered in evidence. Similarly a newspaper story was introduced (Exh. P-15) carrying a headline to the effect that C. I. O. was preparing for "invasion" of Jersey City, and it is upon this headline, which eventuated in that peaceful distribution of circulars, brutally interrupted by the police, to which the court below adverted, that petitioners purport to have rested a considerable part of their program of supression. There is no legal proof that any threat of "invasion" was made by respondents anywhere, at any time.

If the civil liberties are to be granted or denied on the basis of a reading of newspapers—and a partial reading at that—then we have indeed traveled a long way on the road to despotism—constitutional law has become a law by headlines.

The basic question presented on the undisputed evidence is—*whether consistently with the Constitution and laws of the United States a municipality may deny the civil liberties to a particular class in the community in the alleged belief—without more—that that class is "undesirable", "un-American", "Red" or "subversive".*

A prior case arising in the same area—*Casey* v. *American Civil Liberties Union and Boot and Shoe Workers Union**—indicates that the petitioners have not always confined their strictures to C. I. O. and its supposed sympathizers. Two years ago they suppressed with equal rigor at least one local of the American Federation of Labor. Two years hence they may direct their power against still another group. Every citizen is a member of some minority group, whether political, racial, religious

*Referred to upon respondents' prior application herein for a writ of mandamus directed to a five-judge court purporting to act as the Third Circuit Court of Appeals.

or social. If respondents can be suppressed in any part of the United States today, why may not any one of us find himself—or a group of which he is a member—suppressed tomorrow, and on precisely the same theory? The District Court and Circuit Court of Appeals, in vindicating the rights of the respondents herein, vindicated the rights of all citizens. And it is vitally important to the future of democracy in this country that this Court should place its final imprimatur upon that holding. It is vitally important that, by affirming the decree under review, this Court should repulse the authoritarian attack on the base of the democratic process which is symbolized by Mayor Hague in Jersey City.

PART ONE:

THE SUBSTANTIVE CASE

POINT I

The provisions of the decree protecting "liberty of the person" are amply supported in fact and law.

A. *Exclusions and Removals*

Jersey City's first technique in dealing with "undesirables" is a throwback to Colonial days—happily it is unique to Jersey City at the present time (see R. 1352-3).

The police (for it is they who decide, Casey, R. 782-3) are said to be vested with a singular discretion (for the matter is discretionary, Hague, R. 1047). When dissatisfied with particular persons, the police exclude them from the town, or escort them to some remote part of the town and dump them there, or escort them beyond the City limits either by commandeering their automobiles or by use of police cars, or place them forcibly on the ferries or tubes and compel them to go across the Hudson to New York. This is the technique of "deportation," much agitated in the record.

Respondents and their attorneys quite frankly admit this practice. They could not well do otherwise. For instance, wholesale exclusion and removal of C. I. O. members and others occurred on November 29 (R. 265-6, 289-90, 291-2, 311-2, 363-5, 374-5, 382-4, 916-19). The proof is uncontradicted that the persons involved were creating no disorder, nor were they threatened with bodily harm by anyone other than the police themselves. Norman Thomas (R. 406-7, 448-9, 478-80) and others (R. 408-10, 444-5) were deported to New York late in April; there was no mitigation of the official policy.

The legal and official lights of Jersey City, far from apologizing for deportation at the trial, sought to justify it on a variety of theoretical grounds.

The Corporation Counsel at one point states, "well, we will answer that by saying that you cannot deport *if no unlawful acts are committed*" (R. 526). At a later stage of the trial counsel shifts his position and observes that deportation is justified of "those who are either committing unlawful acts *or that he knows are going to commit unlawful acts*" (R. 783; see 805-6).

Petitioner Casey, the Director of Public Safety, a believer in the technique of "shoving around" as a substitute for arrest (R. 749), likewise sanctions deportation, also on a variety of grounds. At R. 754, "my opinion is that a policeman has a perfect right to remove *the cause of that disturbance* no matter what it is, whether it is general or what the disturbance is." But at R. 752, "my opinion is that a policeman has a perfect right to escort anybody *from the seat of danger.*" Once having the alleged right to remove a person from the seat of danger, the police may go further and escort him *out of town*, even though a safe place could be found within the town (R. 751-4). And a human being may be excluded *in limine* from the boundaries of Jersey City under conditions which would justify his deportation if he had perchance entered the City (R. 782-3). Finally, the Director quite frankly stated that the real test is whether "you think you as Commissioner of Public Safety can get along better with him out of the community, and if you think he is going to cause trouble in Jersey City? A. Yes, as an undesirable, yes" (R. 782).

Mayor Hague takes an even more liberal view of the question of deportation. At R. 1042 the Mayor is of the opinion that "when a police officer puts them in a car and takes them somewhere not the police station," *"I think he is doing them a favor."* At R. 1080 he justifies deportation because the "radicals" and "undesirables" involved

want to be arrested! "Now, to arrest him would only mean what they desire. Their whole stock in trade is to appear in police courts for publicity purposes."

The Mayor believes that dissentients who were not born in this country should be "driven" out of here; and that those who were born in this country should be deported to concentration camps in Alaska (R. 1089). He views the deportation of "undesirables" from the limits of Jersey City as a minor application of that comprehensive principle of deportation (R. 1133).

B. *Unlawful Searches and Seizures*

Witnesses to the events of November 29 testified without contradiction that the police, without search warrant, indiscriminately searched and seized the persons and personal belongings of the distributors and of the observers. "Frisking" was the order of the day. These wrongs were committed by the police not only as to persons engaged in the attempt to distribute the circulars but as to persons who made no such attempt; and they were committed not only as to persons who were arrested but as to persons who were not arrested (R. 184-5, 218-9, 223-6, 293, 358-9, 363-4, 376, 384).

Nor do the police of Jersey City require the excuse of an "invasion" of leaflet distributors; they search and seize without warrant in less frenetic situations. Any C. I. O. car appears to be fair game for search at any time (R. 344-7, 503-4, 910-12, 959-60).

Counsel for Jersey City stated squarely on the record that search and seizure without warrant is *"the custom of the Jersey City police"* where the persons involved are *"suspicious looking characters"* (R. 507). The Director of Public Safety testified to like effect (R. 729-30, 731, 732):

> "Q. Now, Commissioner, in your exercise of your duties as head of the Department of Public Safety what are the instructions if any, in respect to stopping automobiles with foreign plates? A. They

don't—*it is not strictly foreign license plates. Any car that looks suspicious,* the orders of the department, my orders, are to look that car over, see who is in it. If there is anything suspicious about them, to bring them in and check up on them, which I think I got a perfect right to do under the law."

• • • • • • • •

"Q. *And if it looks suspicious to him he has the right to search the car?* A. Yes, sir, he has. *That's a ruling of the head of the Department of Pubic Safety.*

"Q. And he has the right to search the papers and valises and baggage of the occupant? A. *He has the right to look through the baggage, but not to read the correspondence, I guess, if that is what you are referring to; I don't know.**

"Q. That's in part. He has no right to look at the papers in a man's personal wallet? A. He has no right, no. He has a perfect right to search him for guns or fire-arms or black-jacks."†

• • • • • • • •

"Q. Tell me what the *general regulations* are to instruct the police as to *when a car or the occupants look suspicious.* Have you got any general instructions on that? A. *There is not.* That's up to the judgment of the man in charge of that car."

The testimony indicates that not even a "suspicion" of wrongdoing—in the vaguest and most general sense of that term—attached to the persons and cars seized and searched without warrant. The stories told by the witness Cometa and respondent Macri unmistakably indicate

---

* In fact, personal papers are rifled and examined. See, *e. g.*, R. 503-4, 910-12.

† On Casey's cross examination there were offered in evidence J. C. Bureau of Identification photographs and data and Hudson County Bureau of Criminal Identification records (Exhs. D-3-8) on five men who were picked up and searched on February 6, 1938—according to the data, a gun was found in their car. Such discoveries, according to Casey, justify the policy of search on "suspicion." No connection was made out with any of the respondents (R. 1592). It is interesting to note that the disorderly conduct charge lodged against the men has since been dismissed by Judge KINKEAD in Jersey City; and the grand jury has taken no action on the charge of possession of a weapon although more than a year has elapsed.

that automobiles of union organizers are "spotted" by the police and "tailed". Periodic searches are then made in the fond hope that incriminating materials will be uncovered. The hope has proved vain, but the searches and seizures go on.

C. *Persistent Interference by Petitioners With Respondents' Rights of Communication and Locomotion, All Without Arrest or Trial by Due Process of Law.*

1. "Molestation"

Petitioners have kept union offices under constant surveillance by plainclothesmen (R. 263-4, 268-70, 504-6, 897). The effect, in the language of one union man (R. 269-70):

> "Q. You didn't like to see plainclothesmen and police on the streets, did you? A. *Not that I don't like to see them, but I feel they are there too much, in front of 76 Montgomery Street.*
>
> "Q. You mean they should have consulted you as to the disposition of the various police officers? A. I didn't say that.
>
> "Q. Was there anything you had to conceal that made you uneasy when the police were around? A. No, I have nothing to conceal.
>
> "Q. Well then, why did you object to them being around? A. *Because I have contacts with workers from the open shops that I am organizing, and when these workers come around to 76 Montgomery Street to see me and they see suspicious characters downstairs, the next time——*
>
> "Q. You mean the plainclothesmen and the policemen, do you? A. The plainclothesmen. *The next time they are afraid to come around, that they may get a report, and the next day lose their jobs.*"

The police have insinuated themselves by counterfeit means into union offices (R. 894-7), have molested workers in front of union headquarters (R. 897), and have seemingly indulged in petty tricks of annoyance (R. 909).

They have "tailed" the cars of union organizers (R. 503-4, 910-12), and they have on various occasions warned organizers not to engage in "solicitation" of workers to join the union (R. 504, 911-12). A captain of police construes a court decision to mean that in the absence of a strike organizers cannot park in front of a plant to talk to workers as they come out (R. 940). There is evidence of eavesdropping and molestation when, perchance, an organizer does succeed in talking to a worker (R. 940-1).

All this has proceeded in an atmosphere of tension and fear created through the hysterical, false statements of Mayor Hague and other City officials:

> "If the people of my city believe in me [Hague], as I know they do, all I ask is that the people of Jersey City aid me in my efforts to obstruct *this lawless element, whose only objective is to crush by terrorism; whose motive is to force itself upon our city for the purpose of destroying life and property by violence*" (Hague statement of December 26, 1937, Exh. P-42).

In fact the throttle on labor organizational work is as complete as can be found anywhere in the country. "It has hampered a whole lot," said respondent Macri, "the organization drive of organizing the unorganized workers in Jersey City" (R. 961).

2. Interference With Peaceful Picketing

The fixed policy of the Jersey City authorities is to prevent all picketing (by which is here meant the simple act of walking up and down a street without even a placard in hand: as discussed below)—not by arrest, but by forcibly smashing the picket line—*in any case where, in the opinion of the City authorities, the employer might be able to enjoin picketing on application to a court of equity.* The cops are to this extent to be substituted for the courts. An employer need resort to the courts only when the

police have denied him a *de facto* injunction. Thus the record is replete with legalistic discussions by policemen (R. 939-40) and the City officials as to the meaning and scope of decisions of New Jersey courts granting and denying injunctions to particular employers against picketing. This skullduggery has resulted in the following police rules as to peaceful picketing: In Jersey City, *although the picketing is peaceful, and does not violate any criminal statute or municipal ordinance,* the picket line is smashed if, in the opinion of the law enforcement authorities—

there is no strike (R. 767-8); or

the purpose of the picketing is to persuade workers to join a union (R. 772, 1289),—even in the case of a sweatshop (R. 1297-8; 1304-5); or

the purpose of the picketing is to protest against a runaway shop (R. 777, but *cf.* R. 778); or

people not employed in the particular shop are on the picket line (R. 854, 1289); or

the picketing is "mass" picketing, whatever that may mean (R. 1288); or

the purpose of the picketing is to obtain a closed shop (R. 1290); or

there is no labor trouble or labor dispute, whatever that may mean (R. 1305).

D. *Findings, Conclusions and Injunction*

On the uncontradicted proofs the District Court found that the petitioners "acting in their official capacities have adopted and enforced the deliberate policy" of excluding and removing respondents from the limits of Jersey City, exercising personal restraint over them and interfering with their locomotion on and free access to the public places of the City (Finding C-1); that the respondents were at the time of such exclusion, removal, restraint

and interference acting in an orderly and peaceable manner (C-2); and that the repressive policy is carried out by the police "*on their own administrative fiat without authority of law and without bringing the persons [involved] * * * before any judicial officer in order that such persons may be afforded a judicial hearing or day in court*" (C-3). The court concluded that the policy, in its various aspects, violated the privileges or immunities clause, the due process clause, and the equal protection clause of the Fourteenth Amendment, as well as the interstate commerce clause (Conclusions 2, 3); and entered an appropriate injunction prohibiting exclusion and removal, and enjoining all manner of restraint and interference except "in accordance with any right of search or seizure and any right of arrest and removal as speedily as possible before a judicial officer under existing law" (Decree, A-1, 2, 3). Interference with the right of communication in public places (other than at public meetings) is similarly enjoined (Decree, B-1).

The Circuit Court of Appeals was unanimous in confirming the findings and in affirming the pertinent injunctive provisions (4 R. 108, 109, 110, 142).

E. *The Pertinent Provisions of the Decree are in Accord With Applicable and Controlling Law**

1. As to Exclusions and Removals

The courts below rested primarily upon the *privileges or immunities clause* of the Fourteenth Amendment† in outlawing the municipal policy of "deportation" (4 R. 117). There is no doubt of the soundness of this position.

* The legal aspects of the entire case have been treated in Comment, "The Hague Injunction Proceedings," 48 Yale L. J. 257 (December, 1938), to which the Court is respectfully referred.

† "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * *" (Fourteenth Amendment, § 1).

Freedom to pass without molestation throughout the United States is an attribute of national citizenship, protected against State interference, whether that takes the form of State statute or municipal ordinance, or acts *dehors* statute or ordinance but under color of State or municipal authority. *Williams* v. *Fears*, 179 U. S. 270, 274 (1900); *Twining* v. *New Jersey*, 211 U. S. 78, 97 (1908); *United States* v. *Miller*, 17 F. Supp. 65, 67 (W. D. Ky. 1936); *Marcus Brown Holding Co.* v. *Pollak*, 272 Fed. 137, 141 (D. N. Y. 1920); *United States* v. *Patrick*, 54 Fed. 338, 348 (D. Tenn. 1893); Willoughby, *The Constitution* (1910), pp. 181-2. These authorities stem from *Crandall* v. *Nevada*, 6 Wall. 35, 48-9 (1867) where, in declaring unconstitutional a Nevada tax on persons entering and leaving the State, this Court declared:

> "'Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States, from the most remote States or Territories, is entitled to free access, * * * to * * * every State in the Union. * * * For all the great purposes of which the Federal Government was formed we are one people, with one common country. We are all citizens of the United States and as members of the same community must have the right to pass and repass through every part of it without interruption as freely as in our own States.'"

As recently as 1935 this basic rationale was reaffirmed, the Court saying by Mr. Justice SUTHERLAND that among the privileges comprehended by the first section of the Fourteenth Amendment

> "undoubtedly is the right to pass freely from one state to another. * * * And that privilege, obviously, is as immune from abridgement by the state from which the citizen departs as it is from abridgement by the state which he seeks to enter. This results from the essential character of national citizenship, * * *."

Colgate v. *Harvey*, 296 U. S. 404, 429.

Nor can the privilege be invaded on any theory that disorder will result if particular people are allowed to enter or remain within a particular area. Judge FIELD, later Associate Justice of this Court, rejected that contention in 1874:

> "*Where the evil apprehended by the state from the ingress of foreigners is that such foreigners will disregard the laws of the state, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties.* • • • The state cannot exclude them arbitrarily, nor accomplish the same end by attributing to them a possible violation of its municipal laws."
>
> *In re Ah Fong,* 1 Fed. Cas. 213, 217 (D. Cal.).

The Jersey City policy of deportation likewise offends against the interstate commerce clause (Article 1, Section 8, Clause 3). As the District Court specifically held (Conclusion 2) the movement of persons over state lines is interstate commerce. *County of Mobile* v. *Kimball,* 102 U. S. 691, 702 (1881); *Gloucester* v. *Pennsylvania,* 114 U. S. 196, 203 (1885); *Champion* v. *Ames,* 188 U. S. 321, 352 (1903). In *Colgate* v. *Harvey, supra,* this Court indicated that whatever doubt may have existed at the time of the *Crandall* case as to whether the state could consistently with the commerce clause interfere with movement of persons across state lines "has been resolved in later cases against the power of the state." 296 U. S. at p. 430. On this point this Court was unanimous in the *Colgate* case (*id.* at p. 444). See also *American Steel and Wire Co. of N. J.* v. *Davis,* 261 Fed. 800 (D. Ohio 1919).

The further constitutional vice inherent in the policy of deportation, as recognized by the courts below (4 R. 119), is that it does not rest upon any statutory basis and comprehends a *deprivation of the right to arrest and trial according to acknowledged forms of criminal procedure,* thus

offending flatly against the *due process clause* in the original and fundamental meaning of that clause. As this issue—namely, whether police are privileged to administer punishment in the absence of a statute defining the crime and the penalty, and without resort to arrest and trial—runs through the entire case, it is reserved for more extended treatment below.

2. As to Unlawful Searches and Seizures

The municipal policy respecting search and seizure is similarly violative of constitutional guaranties.

The Fourth Amendment to the Constitution of the United States reads:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation and particularly describing the place to be searched, and the persons and things to be seized."

Of the constitutional provisions dealing with search and seizure this Court has said that they are "of the very essence of constitutional liberty." *Gouled* v. *United States,* 255 U. S. 298, 304 (1921). The Court has also stated that those of the first ten amendments to the Federal Constitution which are "of the very essence of a scheme of ordered liberty", without which "neither liberty nor justice would exist", are to be deemed absorbed by the due process clause of the Fourteenth Amendment. *Palko* v. *Connecticut,* 302 U. S. 319, 325, 326 (1937). Hence today that clause would seem clearly to include a prohibition against unreasonable searches and seizures and so the Circuit Court of Appeals held:

> "We are unable to perceive any reason • • • why the right • • • should not stand on a parity today

with freedom of religion, of speech, of the press and of assembly as guaranteed by the First Amendment. All of these rights are of equal importance to the individual and in our opinion they stand as *pari materia*" (4 R. 133).*

The searches and seizures consistently perpetrated by the petitioners are clearly "unreasonable" within the definitions of that word laid down by the cases construing the guaranty. Petitioners do not pretend, for example, to have at hand before the search begins, circumstances warranting the belief that crime has been committed, much less direct knowledge that crime has been committed. They freely admit that they have authorized search without search warrant of "suspicious looking characters" and "suspicious" cars solely on the ground that they appear to be suspicious, *i. e.*, in the hope of procuring evidence by means of the search that a crime has been committed. This is a perversion of the constitutional guaranty, which forbids search except on probable cause (*Carroll* v. *United States*, 267 U. S. 132 [1925]; *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 357 [1931]; *State* v. *Giberson*, 99 N. J. L. 85 [1923]),—probable cause being defined as "reasonable grounds for suspicion supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious man in the belief that the accused is guilty of the offense with which he is charged" (*Lane* v. *Penn. R. R. Co.*, 78 N. J. L. 672, 674 [1910]), or, in the language of another court, "direct personal knowledge, through * * * hearing, sight or other sense, of the commission of the crime by the accused." *Elrod* v. *Moss*, 278 Fed. 123, 130 (C. C. A. 4th, 1921). Search upon mere suspicion is precisely what was intended to be put beyond the pale (*Carroll* v. *United States*, *supra*, pp. 149, 154),

* That court also held that the right to be free of unreasonable searches and seizures "is a fundamental civil right * * * and a privilege of Federal citizenship. As such it is secure against abridgment by the states, by the privileges or immunities clause of the Fourteenth Amendment, as well as by the due process clause of that amendment" (4 R. 118).

and cannot be condoned on any plea of efficiency in crime detection. *Weeks* v. *United States*, 232 U. S. 382, 393 (1914).

Respondents urge that the Circuit Court of Appeals was correct in holding that the Fourteenth Amendment conferred a right to be free of unreasonable searches and seizures by the states and their instrumentalities. Assuming, however, that the Fourteenth Amendment does not apply, the New Jersey Constitution sufficiently covers the searches and seizures revealed by the record. Article I, Section 6 of that constitution contains language "substantially similar" to that appearing in the Fourth Amendment, and has been similarly interpreted by the Courts of New Jersey. (*Katz* v. *Eldridge*, 96 N. J. Law 382 [1921]; *State* v. *Condon*, 40 N. J. L. J. 293 [1917].) As the unlawful searches and seizures are part of a scheme or conspiracy hostile to Federal constitutional guaranties jurisdiction to enjoin them would exist in any event—they would represent an intimately connected local ground. (*Hurn* v. *Oursler*, 289 U. S. 238, 246 [1933].)

3. As to Interferences and Restraints Imposed upon Respondents without Arrest and Trial by Due Process of Law.

A substantial portion of the proof in this case illustrates a studied policy on the part of the petitioners to deprive respondents of the safeguards inherent in the traditional administration of the criminal law in this country—more particularly, a studied policy to deprive respondents of the right to test the legality of official action through *arrest and trial by due process of law*, and by the same token to displace the rightful jurisdiction of the courts. Such is the effect of the official municipal policy respecting deportations, detention under guise of arrest, "molestation," and interference with peaceful picketing. We take as a prototype the subject of interference with

peaceful picketing; identical considerations apply to deportations, "molestation," * etc.

If the police policy as to peaceful picketing were in terms embodied in a criminal statute, it would be unconstitutional in large part or altogether. In the recent opinion of this Court in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468 (1937), Mr. Justice BRANDEIS, speaking for the majority, pointed out that peaceful picketing is a mere combination of the civil rights of free speech, free press and lawful assembly; as such it is protected against State invasion by the Fourteenth Amendment. "Members of a union might, without special statutory authorization of a State, make known the facts of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution*" (p. 478). Peaceful picketing is, therefore, not only lawful in itself, but guaranteed by fundamental constitutional provisions.

The further, fundamental and over-riding objection to the Jersey City policy is, however, that it rests upon no statutory basis whatever, and that it utterly misconceives the function of the police.

In respect of peaceful picketing as well as other rights of labor, Jersey City has substituted for justice under the law a "prerogative justice" which is administered with a police stick, is as summary as a blow on the jaw, brooks no question and permits of no appeal.

---

* As to the category of "molestation", see particularly the suggestive language of *Wallace* v. *Ford*, 21 F. Supp. 624, 627-8 (N. D. Tex., 1937): *"The waiting, spying officer, ready to pounce upon his prey, is really antagonistic to the constitutional provisions which provide that there shall be certain preliminary steps taken before the citizen can be subjected to prosecution.* Those precautions grew out of the people's fear of the administrative and executive departments of government. They desired a real, functioning judicial power, even as they arranged for a fully panoplied legislative body. If the officer is to sit by the citizen, or in the citizen's place of business, and intimidate the timid and scare away the customer, then the citizen is already condemned before he has a trial. He is already branded before he has been pronounced guilty. The very fact that the officer is there is notice to the customer that the proprietor is distrusted. That he is not law-abiding. That he is unfair or fraudulent or crooked. *It is a handicap to the free man and is repugnant to our system of government."*

When a cop "breaks up" a picket line (or "deports" a citizen or the like) without making an arrest, he is administering punishment. The principle underlying criminal justice in the remaining civilized nations of the world, including the United States, is that punishment may be inflicted under the following conditions and not otherwise: (1) a clearly defined standard of criminal responsibility enunciated by the legislature or under express authority of the legislature; (2) notice to the accused of the crime supposed to have been committed by him; (3) opportunity to the accused to be heard in his own defense under the panoply of a fair trial.

These elements constitute that "due process of law" guaranteed by the Fourteenth Amendment against infringement by the several States or by any person acting under color of State or municipal authority. *Powell* v. *Alabama*, 287 U. S. 45, 68 (1932); *Snyder* v. *Massachusetts*, 291 U. S. 97, 122 (1934). *Cf. United States* v. *Ballard*, 12 F. Supp. 321, 325 (D. Ky. 1935); *People ex. rel. Gow* v. *Bingham*, 57 N. Y. Misc. 66, 70 (1907); *Delafoile* v. *State*, 54 N. J. L. 381, 387 (1892).

Police interference with peaceful picketing in Jersey City, as practiced over a considerable period of time with the sanction and under the specific direction of the City heads, violates each of the elements of due process of law and is lawless and unconstitutional from beginning to end. Mayor Hague was asked to name any criminal statute or municipal regulation which inhibits peaceful picketing and was unable to do so (R. 1368-73), and in fact there is no such statute or municipal ordinance. Absent a criminal statute or municipal regulation covering the ground, the police are without power or authority to break up picket lines or to manhandle pickets. But even if a criminal statute or municipal regulation did exist covering the ground, it would have to be enforced by arrest and fair trial; neither is accorded in Jersey City. (The point is well put by Mr. Arthur Garfield Hays when he

speaks of "the constitutional right to be arrested.'") The police policy as to peaceful picketing thus stands as unabashed, unexcused and unconstitutional hijacking. As was said by the court below, "When, as in the case at bar, such conduct receives the consent and approbation of those charged with the conduct of the city government, justice is destroyed. Such a condition is abhorrent in a democratic community" (4 R. 110).

POINT II

The provisions of the decree respecting circulars and placards are plainly correct. The municipal ordinances involved are void within the rule of *Lovell* v. *City of Griffin*.

A. *Circular Distribution*

Common experience shows that distribution of literature is the substance of the right of free press so far as labor unions are concerned. Here is what Jersey City has done to that right:

An ordinance of the City of Jersey City (4 R. 46—passed January 22, 1924) provides in sweeping terms that no literature may be distributed on the streets of the City. There is no provision whatever for securing permits. Violation is punishable by fine or imprisonment or both and the permissible punishment is increased for a second offense.

C. I. O. sought to test the constitutionality of the ordinance on November 29, 1937. As to the occurrences on the morning of that day, it is enough to say that the distri-

* So far as counsel can ascertain by study of the cases, the right of arrest and trial under the orderly modes of criminal procedure may be suspended only when martial law has been validly declared. See *United States* v. *Adams*, 26 F. (2d) 141 (D. Colo.), *app. dism. as moot*, 29 F. (2d) 541 (C. C. A. 8th, 1928); *Sterling* v. *Constantin*, 287 U. S. 378 (1932).

bution was wholly peaceful so far as the distributors and observers were concerned; and that, as the District Court repeatedly observed (R. 211, 288, 355-6, 369-70, 1003; *cf.*, 387-8, 1103-5), the ordinance could only be tested in the manner in which the respondents sought to test it, *i. e.*, by violation of its terms.

Jersey City met the test in characteristic fashion. Seven persons were arrested for violation of the ordinance but their trial and conviction in Judge Botti's court were a caricature of the forms of justice* (Exh. P-2; R. 313-24); six persons were, without color of justification, arrested and bound over to the Grand Jury on a charge of unlawful assembly † (R. 1193-7; Exh. P-3); other persons were simply stopped and roughly handled—not arrested—by a great battalion of police (*e. g.*, R. 221-2, 311-12, 289); leaflets were *confiscated* (R. 184-5, 221, 311, 346-7, 363, 415-6)—pure and unadulterated theft; and there were attendant wholesale deportations and unlawful searches and seizures.

On March 28, 1938, this Court in *Lovell v. City of Griffin*, 303 U. S. 444, finally and unequivocally disposed of the constitutional question concerning leaflet distribution. While it is now conceded that the Jersey City ordinance is unconstitutional (R. 368-70), that has not affected petitioners' behavior. As one police officer said, "We are enforcing the Jersey City ordinance, not the Constitution" (R. 422). Mayor Hague stated (R. 1239, 1241):

> "Q. Since the decision in the Georgia case, Mr. Mayor, your police have taken up circulars from persons attempting to distribute them in Jersey City, have they not? * * * A. Yes. * * *"

Police interference with distribution of literature by actual *confiscation* has continued and no steps have been

* The men served their sentence in full—bail was refused although appeal was promptly taken and is still pending.

† There has been no further prosecution of these charges to date.

taken by the City Commissioners to repeal the ordinance. At least seven witnesses testified to interference following March 28. Shortly after that date the witness Grace Milgram was stopped and her leaflets confiscated (R. 417, 422). There was like interference with leaflet distribution on April 30 (R. 408, 420, 448, 478-9). And there is abundant proof that leaflets of the Catholic Workers group were confiscated early in May, with attendant police violence, under the specific instructions of Chief of Police Walsh, who was present at the scene (R. 463-4, 473-4, 480-1, 884-6). In no instance which appears of record—neither on November 29 nor during April and May—was the distribution disorderly (apart from disorder created by the police themselves); nor was the literature provocative, obscene, or criminally libelous (Exhs. P-1, 4, 7, *cf.* 32); nor was there any littering of the streets.

Mayor Hague reinforced this indication of future policy by announcing from the witness stand that the City proposes to go on confiscating handbills of which he (*i. e.*, the City administration) does not approve. He said, for instance (R. 1035-6; see also R. 1035, 1184):

> "Q. Or P-7, Exhibit P-7? A. Well, I would say there is an objection to that; *that is not a proper circular to distribute amongst a community that is law abiding; that is a religious circular.*
>
> "Q. You think a religious circular should not be distributed? A. No, I do not. I think they ought to keep out."

Such declarations mean simply that Hague proposed to disregard this Court, and his police have embarked on that lawless policy.

It need, of course, hardly be mentioned that oppression of these respondents by use of an unconstitutional ordinance has taken place while other favored groups were violating the ordinance with the knowledge and tacit approval of the City fathers. There is testimony that litera-

ture of the Chamber of Commerce and literature advertising "bingo" games has been openly distributed on the streets of Jersey City (R. 932). The Director of Public Safety admits that cards of the Police Safety League (Exh. P-30) have been distributed by being placed in mail boxes (R. 726-7) in apparent violation of Section 2 of the ordinance (house-to-house distribution); and the Mayor admits distribution unquestionably in violation of Section 2 (R. 1214-15).

B. Display of Placards

Parallel with the invalid circular ordinance is the ordinance respecting placards—in terms prohibiting the carrying or display of any placard or sign of any nature or description on the public streets or in the public places of Jersey City (Exh. P-38, dated May 18, 1937). As might be supposed, the ordinance is particularly useful to the municipal officials in destroying the last semblance of the right of peaceful picketing—for it means that even in the limited class of cases in which working men are allowed to "picket" in Jersey City, they may not carry their message to the public in the normal and accepted way. The rigid enforcement of the no-placard policy against labor clearly appears from the testimony (R. 261, 267-8, 779, 784-6, 1288).*

It is almost supererogative to add that the no-placard policy is enforced solely against labor—not against other favored classes in the community. Thus, the policy is instinct with discrimination. Petitioners do permit placards and transparencies to be carried in parades (R.

* The Court may be amused, if not enlightened, by glancing at R. 784-6, where petitioners attempt to explain the distinction between distributing handbills from a picket line (the constitutional right to do so must be conceded in view of the *Lovell* case—although in practice Jersey City has paid no attention to this case), and display of the same information in the same form on placards carried by the pickets. Petitioners appear to find a fundamental difference between literature distributed on a horizontal plane and the same literature carried on a perpendicular plane, thus evolving a new geometrics of constitutional law.

781-2, 1295). The ground of distinction between marchers in parades and marchers on picket lines is illuminating on the general approach of the authorities of Jersey City to matters of social importance (Casey, R. 781-2):

> "Q. I said how about parades, do you allow placards in parades? A. I do. * * *
>
> "Q. And you do that because the ordinance in your judgment gives you the power to make a distinction between a parade and a picket line? A. It does, I think so. I may be wrong but that is what I think.
>
> "Q. And you have never consulted counsel on that either? A. No, I haven't; if it is wrong they will remedy it.
>
> Q. But all parades have the right, in your opinion, to carry placards? A. I never stopped it.
>
> "Q. You would have stopped it if it had been in violation of the law as you see it? A. If I got an opinion on it, yes.
>
> "Q. In the absence of getting an opinion, if you had come to the conclusion that it was a violation of law you would have stopped it, wouldn't you? A. I wouldn't stop it without an opinion on that, that is a very technical question. *That is interfering with societies which I think I shouldn't interfere, with lawabiding citizens I will have no trouble.*
>
> "Q. *And Mr. Commissioner, you do interfere with other societies known as trade unions in the carrying of placards, don't you?* A. *I do, yes.*"

C. *Findings, Conclusions and Injunction*

The District Court, on abundant evidence, found a "deliberate policy" of interference by force and violence with distribution of circulars, leaflets and handbills in the public places of the City, the literature sought to be distributed being in no case objectionable and the attempted distribution being in no case disorderly or otherwise offensive (Finding D, Circulars 1, 2, 3, 4). It likewise

found competent proof that the petitioners "threatened to pursue" that policy (5). Similar findings were made in respect of interference with the carrying and display of placards (D, Placards, 1, 2, 3, 4). In its conclusions of law (4, 5) the court voided the circular and placard ordinances as repugnant to the due process and equal protection clauses of the Fourteenth Amendment; and in its decree enjoined the petitioners from further interference with these civil rights, incorporating some of the language of the *Lovell* case in the clauses of its order* (Decree, B-2, 3).

The Circuit Court was unanimous in confirming the findings and in affirming the pertinent injunctive provisions (4 R. 111, 143).

D. *The Lovell Case is Controlling*

No extended argument seems necessary. The *Lovell* decision is *a fortiori* dispositive of the Jersey City ordinances because the latter, unlike that of the City of Griffin, are absolute prohibitions, not merely "previous restraints" by license or permit.

The courts below properly held that there was no constitutional distinction between circulars and placards; both fall within the rule of the *Lovell* case (4 R. 110-111). See Comment, 48 Yale L. J. 257, 264-5.

---

* That part of the language in the *Lovell* case which refers to "ways [of distributing] which might be regarded as inconsistent with the maintenance of public order or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets" and which is incorporated in the Decree obviously refers to subsequent punishment, and not to previous restraint as the petitioners have contended.

POINT III

The holding of the court below that the standard of anticipated disorder contained in the Jersey City ordinance as to public speaking is unconstitutional, is sound in law. The alternative, independent holding that the ordinance, whether or not the standard is *per se* unconstitutional, has been unconstitutionally applied to the respondents, is likewise sound; the concurrent findings of arbitrary and discriminatory enforcement are supported by ample evidence.

Having been denied the right to convey their message to the people of Jersey City by means of the printed word, respondents sought a forum where they might express their views by word of mouth, and incidentally criticize the official policy of suppression and present a "bill of grievances".

Respondents' first recourse was to *private* meeting halls. It has been noted above that search for such halls proved unavailing. Mayor Hague's explanation of this exceptional embargo may be taken as correct—it resulted from the official campaign of vilification and abuse directed against the respondents, combined with an implied threat of official reprisal; to which may be added the threat of enforcement of an extraordinary City ordinance (R. 21—dated January 21, 1920) forbidding hall-owners, under severe penalty, to rent halls without first obtaining permits for any meetings whereat certain types of subversive doctrine are to be advocated—but conferring no power on the City authorities to deny permits. The constitutionality of this ordinance was assailed in the bill of complaint (R. 7-9).* Although the District Court was "skeptical enough

* A New Jersey court has interpreted the ordinance as above set forth and judicially held it to be *"most peculiar"*. *Hudson County Committee* v. *Hague*, N. J. Chanc., #117-203, January 19, 1937 (FIELDER, *V. C.*).

to realize that municipal authorities (like other authorities) are possessed of indirect means of coercion" (R. 112), it did not award injunctive relief on the subject of private halls, holding that proof of coercion must be supported by admissions of the hall-owners themselves—a ruling which emphasizes the heavy burden cast on the respondents by the trial court in proving their case, a burden which they carried successfully on every other phase of the controversy.

The objective fact remains that respondents could obtain no private halls in Jersey City. The issue of *public* meetings, therefore, was of more than theoretical importance; if the public places of the City were not made available to them, the respondents would be literally without a voice in Jersey City.

Respondents C. I. O. and A. C. L. U., in the latter part of December, 1937, duly applied for permits to hold meetings in the public places of Jersey City. It was a last resort.* When, by January, 1938, this civil right had also been denied by the petitioners (R. 27-46; Exh. P-13), the circle of suppression was complete. So far as these respondents are concerned in the Jersey City area the major civil rights, although constitutionally guaranteed, are effectively nullified. They are non-existent also for numerous organizations and persons whose only fault is that they have the misfortune to be regarded by the petitioners as allied in sympathy or in motive with the respondents: thus from December, 1937 to June, 1938, the time of the trial herein, permits for public meetings were likewise denied to a variety of organizations including the American Whig-Cliosophic Society of Princeton University (proposing Senator Borah as speaker) and the Catholic Workers. Nor can there be any doubt that this condition, unbelievable in this democracy, will be perpetuated in Jersey City unless stopped by the decree under review.

* See text of the C. I. O. application (Frazer to Casey, December 23,—R. 33-4).

The Ordinance

Denials of the right to hold meetings in public places were nominally predicated upon an ordinance believed to be unique among municipal regulations in this country. It imposes a police pre-censorship tied to a standard—prevention of riot, disorder or disturbance—which this Court has clearly held to be improper and invalid.

The ordinance (R. 26—adopted April 15, 1930) provides that "no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City" shall take place without a permit first obtained from the Director of Public Safety. Application for a permit must be made at least three days prior to the proposed parade or assembly. The Director may refuse to issue the permit when "after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage". Violation of the ordinance is a penal offense.

Rulings of the Circuit Court of Appeals and the District Court as to this Ordinance

The Circuit Court of Appeals held that the standard set up in the ordinance for the denial of permission to hold public meetings is unconstitutional as a previous restraint; and that, regardless of the constitutionality of the standard *per se*, the ordinance had been applied to the respondents in an arbitrary and discriminatory, and therefore unconstitutional manner. The pertinent injunctive provisions of the decree under review (paragraphs B-4[a], [b], [c], [d] of the decree entered by the District Court, as modified by the Circuit Court of Appeals, 4 R. 164) make this holding effective as follows: Petitioners are

restrained from interfering with the holding of meetings by the respondents in the public parks,* streets and places of Jersey City, provided applications for permits to hold such meetings are made three days in advance, and provided further that a permit may be refused, in the case of the public parks, because of conflict with recreational schedules and, in the case of the public streets and places, because of conflict with the easement of public passage. Petitioners are also restrained from withholding reasonably adequate police protection to the respondents at meetings held by them as aforesaid. Petitioners are also specifically restrained from continuing to refuse these rights to certain named individuals on whose behalf permits were applied for by respondents in December, 1937.

The decree as entered by the District Court differed from the decree under review only in the following respect: it provided that the respondents' rights as to the public streets and places other than the public parks were to continue "unless and until" the petitioners adopted and enforced the "deliberate policy" of forbidding meetings of any kind in such streets and places. The Circuit Court modified by striking out the "unless and until" clause. The modification was unquestionably proper.† Cases relating to freedom of expression make no distinction between parks and streets and there was no special reason for establishing a distinction in the case at bar. It did not appear from the record that traffic conditions are such in Jersey City that it is impracticable to hold any street meetings therein; indeed the contrary plainly appeared in the record. So long as traffic does not render all street

*The petitioners' argument that the use of the public parks for speaking purposes is not a proper park purpose is absurd in view of the fact that the ordinance, which they are seeking to uphold, contemplates speeches in parks.

† Respondents did not appeal from the District Court decree because it was not anticipated that Jersey City would adopt the policy of barring all street meetings; until it did, respondents were entitled under the District Court decree to equivalent rights in the streets and parks. Respondents disagreed, however, with the distinction drawn by the District Court and so stated in their brief as appellees in the Circuit Court of Appeals (Brief, p. 44).

meetings impracticable, the municipality is not justified in barring them altogether, even though the parks are held open for the purpose—and so the Circuit Court of Appeals held. If, in the remote and presently unforseeable future, traffic conditions should become so acute in Jersey City as to make all street meetings impracticable, the City would of course be entitled to deny permits for street meetings under the very decree as modified, since conflict with the easement of public passage would then exist in every case.

In basic theory there is no material variance between the decree as entered by the District Court and the decree as modified by the Circuit Court of Appeals. Both insure respondents a public forum in Jersey City, and both hold that anticipation of disorder is an invalid ground for denying the right.

It will now be shown that the decree under review is sound, resting as it does upon the alternative propositions that the standard carried in the ordinance is *per se* unconstitutional (A and B, *infra*), and that the ordinance has in any event been unconstitutionally applied to the respondents (C, *infra*).

A. The standard set up by the ordinance imposes a previous restraint and is void.

1. *Meaning of Previous Restraint*

It is settled that freedom of speech and of the press are secured by the due process clause of the Fourteenth Amendment against invasion by the States and their governmental agencies. *Near* v. *Minnesota*, 283 U. S. 697, 707 (1931); *De Jonge* v. *Oregon*, 299 U. S. 353, 364 (1937); *Lovell* v. *City of Griffin*, 303 U. S. 444, 450 (1938). And just as freedom of the press embraces as an essential attribute the right to circulate as well as the right to publish (*Lovell* v. *City of Griffin, supra*), so freedom of speech embraces as an essential attribute the right to address an

audience as well as the right merely to talk (*e. g., Whitney* v. *California,* 274 U. S. 357 [1927]; *De Jonge* v. *Oregon, supra;* see also *Palko* v. *Connecticut,* 302 U. S. 319, 324 [1938]). Both guaranties are designed to protect the right of a man to *communicate* his thoughts to his fellows, and not alone the right to express those thoughts.

In their primary meaning, freedom of speech and freedom of the press mean freedom from previous restraint.* This Court has said that

> "While this freedom from previous restraint upon publication cannot be regarded as exhausting the guarantee of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision."
>
> *Lovell* v. *City of Griffin, supra,* pp. 451-2.
> See also, *Grosjean* v. *American Press Co.,* 297 U. S. 233 (1936).

The essence of the doctrine which prohibits previous restraint is that expression may not be curtailed *in advance;* that gag laws are inconsistent with freedom. If a man in speaking adds the persuasion of his fists, he may be prosecuted for disorderly conduct; if what he says is libelous or obscene or incites to riot or sedition within the rule of clear and present danger, he can and should be held accountable under the relevant provisions of civil and criminal law. But he cannot be prevented by pre-censorship from giving utterance to his thoughts, whatever they may be. As Judge Biggs said below: "If the words used by a speaker are slanderous, the injured person may sue for damages in a court of law. If the speaker incites to riot or crime, the police may arrest him forthwith and the criminal processes of a democracy are available to punish him." But "Speakers may not be prohibited from

* They have been extended to include certain prohibitions on subsequent punishment as well. See, *e. g., Herndon* v. *Lowry,* 301 U. S. 242 (1937).

speaking because they may say something which will lead to disorder" (4 R. 114-5). See also 4 Bl. Comm. 151, 152.

In the words of this Court, "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed." *De Jonge* v. *Oregon, supra,* p. 364.

Examined in the light of these accepted principles, the standard of disorder prescribed by the Jersey City ordinance is seen to be an invalid previous restraint. Under the ordinance a man may be forbidden *in advance* the right to address the public on the ground that his words will, in the opinion of the Director of Public Safety, provoke disorder. Worse, he may be refused the right to talk on the ground that disorder will be occasioned, not by what he may say, but by those who attend his speech, perhaps with that very purpose in mind. Under the Constitution a speaker may, if his words violate a valid law, be punished for what he says *after* he says it, but he may not be barred the right to speak *in limine* on the basis of a guess that he will be lawless, or that others will be lawless and riot in resentment against him or what he may choose to say. On the contrary, it is the function of democratic government, in the event disorder is apprehended, to take whatever steps may be necessary to protect the speaker against those who would interfere with or molest him. The Circuit Court of Appeals cogently stated the implications of any contrary rule:

> "The interpretation of the rights of free speech and free assembly contended for by the [petitioners] is shocking and places these rights in the hands of those who would destroy them. If the ill-intentioned threaten riot, speech may not be had. Under what conditions then would not the cry of riot be raised. Applying the [petitioners'] doctrine liter-

> ally, political speakers might not stump a city in an election if their opponents objected to what they had to say and threatened disorder. The strict application of such a rule would result eventually in the existence of but one political party as is now the case under totalitarian governments'' (4 R. 115).

The decree under review states and enforces the constitutional rule and does not go beyond it.

The respondents do not contend that there is, nor did the courts below find, any constitutional or social objection to the requirement of permits for public meetings. Permits must be applied for three days in advance: so said the ordinance and so says the decree. The City is thus given notice of the gatherings that are to be held, and is enabled to make whatever preparations or take whatever precautions it deems necessary. Furthermore, under the decree Jersey City is properly given the right to refuse permits on the ground of traffic conditions or conflicting recreational schedules—to this extent the exercise of the right of free speech is reasonably accomodated to other uses of the streets and parks. What petitioners are precluded from doing is anticipating a riot before an applicant has opened his mouth and denying him the right to speak in public places on the basis of such a guess. That anticipation of riot or disorder is not a valid ground for denying the right is settled by *Near* v. *Minnesota, supra.*

2.—NEAR V. MINNESOTA *and Like Cases Controlling.*

Near v. *Minnesota* involved a Minnesota statute which provided that any person in the business of ''publishing a malicious, scandalous and defamatory newspaper'' was guilty of a nuisance and subject to a permanent injunction directed against the further publication of the paper. An action praying the issuance of such an injunction was instituted against the plaintiff Near on the ground that his paper, the Saturday Press was ''scandalous'' within the

meaning of the statute and therefore constituted a genuine threat to the peace and order of the community. The record in the case left no doubt that the Saturday Press was in fact conducive to breaches of the peace. There was reference to "an attempt to assassinate one Guilford, one of the original plaintiffs, who, it appears from the articles, was shot by gangsters after the first issue of the periodical had been published" (p. 704). Apprehension of violence from the continued publication of the newspaper was apparently well founded:

> "The articles in question also state that, when defendants announced their intention to publish the Saturday Press, they were threatened and that soon after the first publication Guilford was waylaid and shot down before he could use the firearm which he had at hand for the purpose of defending himself against anticipated assaults. It also appears that Near apprehended violence and was not unprepared to repel it. There is much more of like significance.
>
> "The long criminal career of the Twin City Reporter—if it is in fact as described by defendants—and the arming and shooting arising out of the publication of the Saturday Press serve to illustrate the kind of conditions in respect of the business of publishing malicious, scandalous and defamatory periodicals by which the state legislature presumably was moved to enact the law in question. • • •" (Minority opinion of Mr. Justice BUTLER, pp. 731-2).

The Minnesota Supreme Court concluded that the publication of the Saturday Press should be enjoined because it was "scandalous" and "the distribution of scandalous matter • • • tends to disturb the peace of the community", and "to provoke assaults and the commission of crime" (p. 728), the prevention of which was the object of the statute. This Court did not question the correctness of the findings. Freely assuming that the Saturday Press was a threat to peace and order, the Court nevertheless held that the statute under which its publication had been

enjoined was a prohibited previous restraint. Even though there the restraint rested on judicial findings based on past experience with the offending publication, and not as here on the mere guess of an administrative officer, the statute was adjudged unconstitutional on its face (pp. 721-2):

> "Equally unavailing is the insistence that the statute is designed to prevent the circulation of scandal which tends to disturb the public peace and to provoke assaults and the commission of crime. *Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably create a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication.* 'To prohibit the intent to excite those unfavorable sentiments against those who administer the government is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions of their characters and conduct' [Madison's Works, Vol. 4, p. 549]. *There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship and restraint upon publication.* As was said in *New Yorker Staats-Zeitung* v. *Nolan*, 89 N. J. Eq. 387, 388, 105 Atl. 72: 'If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.' The danger of violent reactions becomes greater with effective organization of defiant groups resent-

> ing exposure, and if this consideration warranted legislative interference with the initial freedom of publications, the constitutional protection would be reduced to a mere form of words." (Italics ours.)

Judicial condemnation of the standard of anticipated disorder could not be clearer.

This Court again indicated the repugnance of the standard to the constitutional guaranty in *De Jonge* v. *Oregon, supra.* The Chief Justice, speaking for the unanimous Court, there held that a Communist could not be subjected to *subsequent punishment* for proselytizing for Communism at a meeting held under the auspices of the Communist Party, assuming throughout that the Communist Party represented a revolutionary movement. In the case at bar the petitioners have acted on the theory that the label of Communist (or "undesirable", "Red", "un-American" or the like) attached to the subject matter of a speech, or to the speaker, or to the sponsor of the meeting, in and of itself presages disorder sufficiently to warrant denial of a permit under the ordinance; and it is upon consideration of such factors that action under any such ordinance is bound, in the long run, to be based. This demonstrates, in a somewhat different aspect, the unconstitutionality of the ordinance, for certainly what cannot be punished if done may not be prevented in advance. Said the Court in the *De Jonge* case:

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. * * * If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the state

> instead of prosecuting them for such offenses seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge" (pp. 364-5).

It is likewise "a different matter when the state instead of prosecuting them for such offenses seizes" upon prevision of disorder as a ground for prohibiting upon pain of criminal penalty "a peaceable assembly and a lawful public discussion".

Lower court cases accord with the *Near* case in striking down attempts to prevent free expression on the ground that disorder will follow if it is allowed. See, *e. g., Dearborn Pub. Co.* v. *Fitzgerald,* 271 Fed. 479 (D. Ohio, 1921) which involved an effort on the part of the Cleveland law enforcement officials to prevent the distribution in the public places of Cleveland of the Dearborn Independent. The officials had announced that because of the inclusion of certain anti-semitic articles in the plaintiff's paper, they would permit no further public sales of it, and they threatened to arrest anyone who attempted to sell it. They sought to justify their position by arguing that if the papers were sold in the streets, they would "create religious and racial dissensions and create breaches of the peace". The court decisively rejected the argument that anticipation of disorder could validate the ban:

> "Nothing appears to indicate who were or might be excited by its sale to break the peace. It would be a libel, it seems to me, on people of the Jewish race to assume that they are imbued with such a spirit of lawlessness. If it be assumed that the article might tend to excite others to breaches of the peace against people of the Jewish race, the reply is plain. *It is the duty of all officials charged with preserving the peace to suppress firmly and promptly all persons guilty of disturbing it, and not to forbid innocent persons to exercise their lawful* and equal rights" (p. 483).

The court concluded that:

> "If defendant's action were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for the abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace, and the right to a free press would likewise be destroyed" (p. 485).

In New Jersey, the theatre of the petitioners' operations, a similar view has been taken. Thus in *American League of the Friends of New Germany* v. *Eastmead*, 116 N. J. Eq. 487 (1934), the court stated that

> "If lawless elements in the community, instead of ignoring such propaganda or meeting it by sound argument, resort to riot, it is the duty of the police to protect the lawful assemblage and to repress those who unlawfully attack it" (p. 488).*

Similarly, in granting an injunction in *Hudson County Committee* v. *Hague* (discussed *supra*), Vice Chancellor FIELDER stated:

> "It is also the duty of the police to suppress by arrest if necessary persons who may express violent disagreement with what may be said at such meetings, rather than punish those who are threatened with attack."†

---

* A suggestive case of similar purport is the famous English "skeleton army" case (meetings of the Salvation Army broken up by "skeleton army"), where FIELD, *J.*, said (*Beatty* v. *Gillbanks*, 9 Q. B. D. 308, 314-5 [1882]): "* * * What has happened here is that an unlawful organization has assumed to itself the right to prevent the appellants [Salvation Army] and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition, * * *"

† It should be noted that these New Jersey cases establish the impropriety of the ordinance under the New Jersey Constitution as well as under the Fourteenth Amendment. Article 1, Section 5 of the former provides: "Liberty of speech and the press. * * * Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that

Of the foregoing cases invalidating previous restraints based upon anticipation of disorder, the *Near* and *Dearborn* cases involved freedom of the press, the *De Jonge* and New Jersey cases freedom of speech. The Circuit Court of Appeals stated that "there is strong analogy between the right freely to publish the written or printed word, and the right here in issue freely to speak in a public assembly" (4 R. 114). The law applicable to the guaranties is the same. This Court always couples them together, revealing their essential identity. Mr. Justice CARDOZO spoke of "the freedom of speech which the First Amendment safeguards against encroachment by the Congress" and "the *like* freedom of the press." *Palko* v. *Connecticut*, 302 U. S. 319, 324 (1937). In *Lovell* v. *City of Griffin, supra,* the Court points out that "freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action." The Court cites for this proposition, without making any distinction among them: *Gitlow* v. *New York,* 268 U. S. 652, 666 (press); *Stromberg* v. *California,* 283 U. S. 359, 368 (speech); *Near* v. *Minnesota,* 283 U. S. 697, 707 (press); *Grosjean* v. *American Press Co.,* 297 U. S. 233, 244 (press); and *De Jonge* v. *Oregon,* 299 U. S. 353, 364 (speech).

3. *The Ordinance Not a General Police Power Regulation*

The petitioners have attempted throughout to obscure the real nature of the regulation here involved by arguing

---

right. No law shall be passed to restrain or abridge the liberty of speech or the press." The standard of anticipated disorder is repugnant to both.

Thomas v. *Casey*, 121 N. J. L. 185, relied on by the petitioners, is a lower court case now pending on appeal before the New Jersey Court of Errors and Appeals. The holding in the *Thomas* case is at variance in theory with the two cases discussed above as well as with *State* v. *Butterworth*, 104 N. J. L. 579, decided by the Court of Errors and Appeals in 1928 and mentioned *infra*, p. 62.

that the ordinance is not directly concerned with free speech, but seeks only to regulate the manner in which public places of the community may be used; whence it follows, they contend, that it is not a previous restraint. It suffices to say in reply that undoubtedly *general police power regulations having nothing to do with speech or the press as such are not considered to be previous restraints.* Thus ordinances and statutes may constitutionally be passed which require that permits be obtained from the building, health and fire departments before a building is used to house a newspaper plant. Newspapers may likewise be compelled to pay a social security tax, to enter into collective bargaining with their employees, and the like.

> "The business of the Associated Press is not immune from regulation because it is an agency of the press. The publisher of a newspaper has no special immunity *from the application* of general laws * * *. The regulation here in question has no relation whatever to the *impartial distribution* of news."
>
> *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 132-133 (1937).

These regulations find their origin, not in the subject matter of the constitutional guaranty, but in the exigencies of communal life which make general rules on fire, sanitation and the like indispensable. These rules, because they have "no relation whatever to the impartial distribution" of the written word as such, are *not* regarded as previous restraints. The same reasoning applies to the right of speech; a speaker, like a newspaper, "has no special immunity from the application of general laws." Certainly a speaker may be required to conform with non-discriminatory regulations based on traffic conditions and proper regard for public recreation other than public meetings.

> "It might be proper on account of the peculiar condition of affairs in a city, that street parades should be confined to certain streets, or should be conducted within certain hours of the day, or should be forbidden in the night time, or that the police department should have some previous notice, or that there should be other reasonable regulations respecting them, justified by such a condition that it would be apparent that regulation * * * was the object of the ordinance. * * *"
>
> *Anderson* v. *City of Wellington*, 40 Kans. 173, 180 (1888).

The decree leaves the petitioners entirely free to deny permits on the ground of traffic necessities or conflicting recreational schedules. Such considerations are of the nature of a "general law" having "no relation whatsoever to the impartial distribution of the spoken word." But the standard of anticipated disorder prescribed by this ordinance does bear a definite relation "to the impartial distribution of the spoken word", for it depends upon a prevision of what the speaker will say and of the effect he or his words will have on those who listen to them. The direct connection between the criterion carried in the ordinance and the subject matter of the contitutional guaranty is in fact freely admitted by the Jersey City officials. For in their application of the ordinance, they at different times have purported to consider such factors as the subject matter of a proposed speech, the identity of the person who is to make it, the auspices under which it is to be made, the effect they believe each of these will have upon the persons who attend the meeting, and the probable reaction of the populace to the speech in the light of "protests" received and other supposed indicia of public opinion. Obviously, a standard dependent upon such factors impinges directly on the right to speak, and, in the words of Judge Biggs "prohibits peaceable assembly except upon terms repugnant to free speech" (4 R. 112).

Insofar as the ordinance embodies the criterion of anticipated disorder, it is not a general police power regulation, but the precise kind of previous restraint denounced as invalid by prior decisions of this Court.

4. DAVIS *v.* MASSACHUSETTS *Is Not In Point Here, and In Any Event Does Not Represent Good Law Today.*

Beyond an ineffectual argument to show that the ordinance cannot have anything to do with free speech because it relates to highways and parks, petitioners make no serious effort to defend the ordinance against the charge that it imposes a previous restraint; they are most gingerly in their treatment of *Near* v. *Minnesota* and like authority. Instead, they rest their argument in support of the validity of the ordinance on *Davis* v. *Massachusetts*, 167 U. S. 43, decided by this Court in 1897. They assert that it "stands for two distinct propositions: (a) individuals have no general constitutional right to speak or assemble in public places, contrary to prohibitory regulations of municipalities, acting under proper delegation of authority; (b) *arbitrary application* [*sic*] of such ordinances cannot be complained of by individuals, since the greater power of absolute and proprietary control, contains the lesser of *arbitrary or discriminatory application* [*sic*]" (Brief in Support of Petition for Writ of Certiorari, p. 17).

It is submitted in reply (a) that *Davis* v. *Massachusetts* is wholly distinguishable from the case at bar; and (b) that even its precise holding is no longer law. It is further submitted that the propositions above quoted, supposed to derive from the *Davis* case, are not pertinent to the case at bar, and in any event do not represent existing law; on the contrary, the law is (c) that a municipality may not, consistently with the Federal Constitution, prohibit the use of all public places for speaking purposes—there is a constitutional right to some public forum; and (d) that even if a municipality might constitutionally deny all public forums, it may not grant them subject to an invalid previous restraint.

(a) *Davis* v. *Massachusetts wholly distinguishable from the case at bar.*

Davis v. *Massachusetts* involved an ordinance of the City of Boston which required that a permit be obtained for any speech to be made in the public places of the City. The ordinance contained no standard or standards for the refusal of a permit. The defendant Davis, without applying for a permit, attempted to make a public address on the Boston Common. He was convicted for violating the ordinance, and his conviction was affirmed both by the Supreme Judicial Court of Massachusetts and by this Court.

In so far as the ordinance in the *Davis* case required that a permit be obtained, there could be no constitutional objection to it. As we have already pointed out, it is entirely reasonable for a municipality to insist upon being given notice of proposed public addresses, and the lower courts so held herein, providing in the decree for due notification to the City authorities. The fact that Davis spoke without even applying for a permit marks, as the Circuit Court of Appeals noted (4 R. 116), one controlling distinction between the *Davis* case and the present case.

More important, however, is the fact that the ordinances in the two cases are totally dissimilar. Unlike the Jersey City ordinance, which conditions refusal of permits upon an anticipation of disorder, the Boston ordinance did not in terms prescribe any standard for refusal. This Court naturally assumed, when passing on the Boston ordinance, that in enforcing it the administrative authority was free to and had abided by constitutional criteria: traffic conditions, etc. The present ordinance is fundamentally different. It lays down a standard which we have shown to be an unconstitutional previous restraint, and leaves the administrative official no room for applying a constitutional standard even if he wishes to.

The *Davis* case does not, therefore, qualify or rebut the conclusion that the standard of anticipated disorder is unconstitutional. It is a holding that the right to speak may be *constitutionally* conditioned—a point which is conceded. This Court took the view that Davis had been validly convicted and punished because he violated a law which could have been constitutionally applied (and Davis made no effort to show that it had been unconstitutionally applied as to him). Mr. Justice WHITE's opinion summarized the point which this Court deemed at issue in the *Davis* case as follows:

> "In the brief of counsel for plaintiff in error, many presumed errors are elaborately discussed, all of which when analyzed rest on the assumption that there was a right in the plaintiff in error to use the Common of the City of Boston *free from legislative or municipal control or regulation*" (p. 46).

That assumption was erroneous and this Court so held. The holding has nothing to do with the validity of an ordinance carrying a standard of anticipated disorder.

The State cases cited by petitioners are distinguishable on precisely the same grounds.

In *People ex rel. Doyle* v. *Atwell,* 232 N. Y. 96 (1921), the ordinance required a permit from the Mayor as a prerequisite to a public meeting, but it laid down no standard. The Court indeed looked to the application of a valid standard, *i. e.,* "acts which tend to hinder public travel" (p. 100). Doyle lost because he had spoken without applying for a permit, in clear violation of an ordinance presumptively valid. The precise holding was simply that *because* the ordinance was valid on its face, *habeas corpus* was an improper remedy.

People v. *Smith,* 263 N. Y. 255 (1934), fares little better on close analysis. There, too, the "defendant not

having applied for a permit" was convicted for talking without one. The ordinance under which he was convicted did not prescribe an unconstitutional standard, and the consequent affirmance of Smith's conviction has not the remotest relevance to the case at bar.

City of Duquesne v. *Fincke*, 269 Pa. 112 (1920), also involved an ordinance merely requiring a permit for public meetings, which was violated by the defendant, and *Commonwealth* v. *Egan*, 113 Pa. Super. Ct. 375 (1934), was a case of conviction for inciting to riot, not a prohibition of the exercise of the right of free speech. We agree entirely with the statement of the court in that case that "Rights of free speech and assembly must be exercised in subordination to reasonable rules and regulations adopted by proper municipal authorities in regard to *use* of public streets and buildings" (p. 383).

The several other cases cited by the defendants are similarly distinguishable. There is no need to analyze them here. None of the cases cited in any way derogates from the decisive effect of *Near* v. *Minnesota*.

(b) *Even the precise holding of the Davis case no longer law.*

We have seen that the precise holding of the *Davis* case, namely, that a City may require by ordinance that permits be applied for, without enacting a standard for the granting or denial of the applications (thus leaving room for the application of a valid standard), has no bearing on the constitutionality of an ordinance which not only requires a permit but conditions its issuance upon a standard plainly imposing a previous restraint. Because the petitioners rely upon the *Davis* case so heavily, however, it should be added that even its precise holding is no longer good law.

In the first place, the *Davis* case was decided before this Court had occasion to pass directly on the amount of power that could constitutionally be delegated to an administrative official. Since *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, decided in 1935, this Court has defined the limits of permissible delegation; and it has certainly held that the delegation is improper if *no* standard of action is prescribed. See also, *Schechter* v. *United States*, 295 U. S. 495 (1935). In the field of freedom of expression, this doctrine was carried to its logical conclusion in 1938 by the decision of this Court in *Lovell* v. *City of Griffin*, *supra*. An ordinance of the City of Griffin prohibited "the distribution of literature of any kind, at any time, at any place, and in any manner without a permit from the City Manager" (303 U. S., p. 451)—just as the Boston ordinance involved in the *Davis* case prohibited the making of public addresses of any kind, at any time, and in any manner upon any of the public grounds of Boston without a permit from the Mayor (167 U. S., p. 44). The ordinance of the City of Griffin was held "invalid on its face" (303 U. S., p. 451) because (among other reasons) no standard was established for the City Manager's action. On identical reasoning the ordinance involved in the *Davis* case would, we think, be held invalid today, if the question of its constitutionality were again presented for determination.

The authority of the *Davis* case is further weakened by the fact that in 1897, when it arose, this Court had not decided that freedom of speech and of the press were included within the orbit of the Fourteenth Amendment. (See *e. g.* District Court opinion herein, R. 78; Circuit Court of Appeals opinion herein, 4 R. 116; minority opinion of Mr. Justice BUTLER in *Near* v. *Minnesota*, *supra*, pp. 723-4.)

Mr. Justice WHITE's opinion reflects the doctrinal background of his day, and its authority is qualified at the present time because the entire background has changed. For example, the analogy pressed in the *Davis* case, and

by the petitioners herein, between the interest of the public authorities in the public places and the interest of a private home owner in his home, becomes inapposite once it be granted that the Fourteenth Amendment protects against invasion of the right of free speech. To the private home owner, the strictures of the Fourteenth Amendment do not apply; to the public authorities they do. Today a municipality must operate the places under its control in the light of the pertinent free speech guaranty; in 1897 a municipality was under no such obligation so far as the Federal Constitution was concerned.

Mr. Justice WHITE's view of the proprietary interest of a municipality in its public places "does not seem consonant with the expressions of the Supreme Court upon germane subjects in a later period"; "it cannot now be doubted that a city owns and its officials administer its streets and parks, not as private proprietors, but as trustees for the people" (4 R. 116-7). One of the purposes of the trust is to implement the right of speech (*id.*).

(c) *A municipality may not prohibit the use of all public places for speaking purposes.*

The petitioners have consistently argued on the basis of the *Davis* case that a municipality may, if it wishes, absolutely prohibit all meetings in public places. Except as a basis for their untenable "greater and lesser" power theory (see d, *infra*), it is difficult to see the materiality of this proposition from petitioners' point of view, since by the ordinance in question no attempt is made to bar all public assemblies in public places. Since the argument that the right to speak in public places is no part of the right of free speech has been strenuously urged, however, we wish to point out that it is erroneous and at variance with the decisions of this Court.

Davis v. *Massachusetts* does not stand as authority for the right of a municipality to bar all public meetings. The

ordinance there attacked did not impose any such prohibition; it merely required that permits be obtained for meetings. The opinion does indeed contain some remarks to the effect that the City of Boston might have prohibited all public meetings *on the Boston Common.* That power may also be conceded without in any way affecting the respondents' case herein. It may be (for all that appeared in the *Davis* case) that Boston Common is so situated that allowing public meetings thereon would unduly restrict traffic or interfere with the use of general recreational facilities. If that were the case, the City of Boston could prohibit use of the Common for public meetings, provided other appropriate and convenient places in the City were open to meetings. And just so, by the terms of the decree under review, Jersey City is left free to bar public meetings entirely in those places where traffic congestion or recreational needs render such meetings impracticable. "It is difficult to conceive a time when a public meeting might properly be held at Broad and Chestnut Streets in Philadelphia, or at Broadway and Forty-second Street in New York City", said the court below (4 R. 115). The Boston Common may have been in the same category when *Davis* v. *Massachusetts* was decided.

If, however, *Davis* v. *Massachusetts* can be said to have intimated that all meetings in public places might be barred, as petitioners contend, it is clearly inconsistent with the American and British tradition, and has been entirely discredited by later decisions of this Court.

The English Tradition.

In England the use of public places for speaking purposes is taken for granted. It is taken for granted despite the fact that in England there is an unwritten constitution which can be altered at will by the Parliament. For this reason the English courts have said that

the right *might be* abrogated. The fact that it has *not* been, that the English government has consistently accorded a right to speak in public places, is especially illustrative of the fundamental character of the right. Typically, licenses and permits are not and never have been required as a condition precedent to speech in the public places of Great Britain. Lord ELLENBOROUGH, in *Cobbett's Case,* 29 How. St. Trials 49 (1804), said that the law of England was a law of liberty and that consistently with such liberty, they had not what was called an *imprimatur*—a license system. In his classic *Liberty of the Press, Speech and Public Worship,* published in 1880, James Paterson wrote that "the courts never went the length of laying down the positive rule * * * that a public meeting could not be held without the license of some public functionary" (p. 19). And in 1915 A. V. Dicey, in *The Law of the Constitution* (8th ed.), indicated the freedom from previous restraint on speech in public places which is typical of England: "Any man may, therefore, say or write whatever he likes, subject to the risk of, which may be, severe punishment if he publishes any statement (either by word of mouth, in writing or in print) which he is not legally entitled to make."

Of course, the right may not be exercised at all times in all places. Highways may not be rendered useless for purposes of travel by public assemblages. *R.* v. *Carlile,* 6 C. & P. 636 (1834). Trafalgar Square, the nucleus of Metropolitan London, cannot be clogged up by a large public meeting. *Ex parte Lewis,* 21 Q. B. D. 191 (1888). Certain types of meetings may not be held within one mile of Westminster Hall. Jennings, *The Law and The Constitution* (1933), page 242. Nor may the public parks be so cluttered with public meetings that there is no space left for children to play or equestrians to ride. But the necessity that there be some adequate places where the right can be exercised has never been questioned. In 1872 a statute was passed which allocated some public park prop-

erty for this purpose. Paterson, *op. cit. supra,* page 23. And while there is no written constitutional provision requiring that space be appointed for use as a public meeting ground, actually today "there are special localities, which by statute, by custom or otherwise, are so dedicated to the use of the public as to be available for the purpose of public meetings." Dicey, *op. cit. supra,* page 498. The petitioners' contention that a municipality may cut off the right of speaking in public places entirely, is inconsistent with the growth and present custom of the English law.

The American Tradition

"The rights of free speech and free assembly are essential parts of our American heritage" (4 R. 114). Traditionally in the United States, freedom of speech means freedom to speak in public places:

> "The right of the people to meet *in public places* to discuss in an open and public manner all questions affecting their substantial welfare and to vent their grievances, to protest against oppression, economic or otherwise, and to petition for the amelioration of their condition, and to discuss the ways and means of attaining that end were rights confirmed and guaranteed them by the magna charta, petition of right, and the bill of rights, the mainstay of the British constitution and the bases of both our federal and state constitutions."
>
> *State* v. *Butterworth*, 104 N. J. L. 579, 581 (1928), *rev'g* 104 N. J. L. 43.

It is not true that the courts of this country regard the use of public places for speaking purposes as a mere privilege revocable at will. *The petitioners have not advanced one case, and it is believed that not one could be found, holding that speaking in the public places of a*

municipality may be entirely prohibited. The most extreme restraint upon the use of the public places for speaking purposes which the American courts have upheld takes the form of the ordinance involved in the *Davis* case, conditioning such use upon obtaining a permit from a specified municipal authority. Obviously, cases sustaining such ordinances do not hold that the municipality could prohibit public speaking entirely. They establish only the proposition that licenses may be required if proper criteria for their issuance are adhered to. Of such a nature are the *Davis, Atwell, Smith, Fincke* and other cases relied upon by the petitioners and discussed above.

Moreover, the right to speak in public places has become so integral a part of American democracy that many American jurisdictions struck down ordinances of the type upheld in the *Davis* case even before this Court established their unconstitutionality in the *Lovell* case. The State courts resorted to many different theories but the net result of their holdings was that even before the *Lovell* decision, the system of making public speaking dependent on uncontrolled administrative discretion, was, on the whole, in disrepute in this country.

State v. *Coleman*, 96 Conn. 190 (1921)—The ordinance is violative of sections 1 and 5 of the Connecticut Bill of Rights, which guarantee equality in rights and freedom of speech.

Anderson v. *Tedford*, 85 So. 673 (Fla., 1920)—"The ordinance is void for unreasonableness."

City of Bloomington v. *Richardson*, 38 Ill. App. 60 (1890)—An ordinance which would apply to all meetings or gatherings of any kind or for any purpose upon the public streets or public grounds of the city held not to be a rightful exercise of the police powers, but unauthorized, unreasonable and void.

Rich v. *City of Naperville*, 42 Ill. App. 222 (1891)—"* * * this ordinance is unreasonable, oppressive * * *."

City of Chicago v. *Trotter*, 136 Ill. 430, 433 (1891)—"Under the ordinance the superintendent of police has even authority to prohibit all street parades and processions whatsoever. * * * It is subversive of the liberty of the citizen and outside of the domain of the law that authority so arbitrary should be lodged in the individual."

Anderson v. *City of Wellington*, 40 Kan. 173, 178 (1888)—The ordinance "is an abridgment of the rights of the people. It represses associated effort and action. It discourages united effort to attract public attention and challenge public examination and criticism of the associated purposes. It discourages unity of feeling and expression on great public questions, economic, religious and political. It practically destroys those great public demonstrations that are the most natural product of common aims and kindred purposes."

Matter of Frasee, 63 Mich. 396, 405 (1886)—"This by-law is unreasonable * * *. It is lawful to provide for dealing with the mischief, but it is not lawful to go beyond reasonable measures and precautions in anticipating it."

State ex rel. Garrabad v. *Dering*, 84 Wisc. 585, 594-5 (1893)—"The ordinance resembles more nearly the means and instrumentalities frequently resorted to in practicing against and upon persons, societies and organizations, a petty tyranny, the result of prejudice, bigotry and intolerance, than any fair or legitimate provision in the exercise of the police power of the state to protect the public peace and safety. It is entirely un-American and in conflict with the principles of our institutions and all modern ideas of civil liberty. * * * The people do not hold rights as important and well settled as the right to assemble * * * subject to the power of any public officer to interdict or prevent them."

This list is not intended to be all inclusive. Additional cases of like purport could be cited, all typical of the democratic American view that it is part of the right of free speech to have a public place in which to speak.

Lovell case is conclusive that there is a right to use the public places for speaking purposes.

Whatever doubt may have existed before the decision in the *Lovell* case as to the right of municipalities to ban all speaking in public places has been resolved by that case against the existence of such a right.

The Lovell case held that freedom of the press meant freedom to distribute written matter in public places. Reiterating the words used by a predecessor bench in *Ex Parte Jackson,* 96 U. S. 727, the Court said (303 U. S., p. 452):

> " 'Liberty of circulating is as essential to that freedom as liberty of publishing, indeed without the circulation, the publication would be of little value.' "

The facts of the case make clear that the "circulating" adverted to was circulating in public places.

Thus in effect the *Lovell* case held that the public streets of a city must be kept open for two purposes: public passage *and* the circulation of written matter. It would follow that the functions of the public parks are likewise dual: recreation and a *locus* for the distribution of the press. Similarly, it is submitted, the streets and parks must be available for the exercise of the right of free speech. The petitioners' entire argument on this issue boils down to an erroneous assumption that public places have the solitary purposes of traffic and recreation.

If freedom of the press means freedom to distribute the written word in public places, then certainly freedom of speech must mean freedom to distribute the spoken word in the same places. It is inconceivable that this Court would draw a distinction between the two, since it has at all times viewed the guaranties of free speech and a free press as substantially identical. The use of public places is even more vital to the existence of free speech than it is

to the continuance of a free press. For literature can be distributed in other ways—by mail, for example. But often no alternatives are open to the speaker who is denied the use of public meeting places. The experience of the respondents herein with private halls reveals that they had no alternative. As was said by the Circuit Court of Appeals, "while streets and parks are to be administered primarily for the use of people for travel and recreation it is equally certain that, consistent with such uses, the public places of a city must be open for the use of the people in order that they may exercise their rights of free speech and assembly. If this were not so it is obvious that these rights would be but empty forms for those unable to obtain suitable private places in which to exercise them" (4 R. 117).

If free speech does not imply a right to speak in public places, then the right of a man to address his fellows depends entirely upon the unpredictable vagaries of private hall owners who have no responsibility or duty to the public, and who by their failure to build halls, or their disinclination to rent them, or their insistence upon exorbitant charges, could at will reduce the constitutional guaranty of free speech to a nullity. This would be especially true in the case of the poor and the underprivileged, those who are most apt to have grievances and least apt to have the funds necessary to rent a hall in which to air them. Since they are even less likely to have the capital necessary to exercise the freedom of the press also assured to them, they would often in practical effect be denied any right to communicate publicly if the petitioners' contentions are correct.

Only if free speech means a free place in which to speak, does the constitutional guaranty assume any realistic meaning. America's long history of town meetings and public assemblages should dispel any notion that a constitutional right can be made entirely dependent upon the will of a few private citizens who by chance have built halls or deal in their rental.

(d) *Even if municipalities could validly bar all speaking in public places, they could not condition such speaking upon an invalid previous restraint.*

The petitioners take the position that if a municipality can forbid speaking in public places entirely, it can condition the right to speak in such places in any way that it pleases. Even "an arbitrary application [sic] of such [public speaking] ordinances cannot be complained of by individuals since the greater power of absolute and proprietary control contains the lesser, of arbitrary or discriminatory application [sic]" (Brief in Support of Petition for a Writ of Certiorari, p. 17). We have already shown that the major premise of this argument is erroneous; that there *is* a constitutional right to speak in public places. But even if the major premise were correct, the conclusion would not follow. Whatever the law as to the right to speak in public places, a City cannot condition permission to speak upon a standard clearly void as a previous restraint.

Assuming *arguendo* that a municipality could ban *all* public meetings, then on petitioners' theory it could do any "lesser" thing—it could ban meetings of persons having red hair, for example, or meetings of Italians, or meetings of lawyers. Similarly, on the petitioners' theory, it would follow from the municipality's plenary control over the public highways that it could close those highways to traffic altogether, or close them between 1 and 2 P. M., or exact confiscatory tolls for the privilege of using them, etc.

Thus the petitioners seek to smuggle in through the back door of this "greater-lesser power" theory a regulation which they could not impose directly without colliding with the Fourteenth Amendment. Similar attempts in the past have consistently met with defeat at the hands of this Court. See for example, *Frost* v. *Railroad Commis-*

sion, 271 U. S. 583 (1926).* There as here, the use of the public highways was at issue. A California Act granted permission to use the highways to private carriers only if they complied with certain conditions which in effect would have converted them into public carriers. The State argued, along the lines here urged by the petitioners, and the highest state court held the act constitutional on the ground "that the state had the power to grant or altogether withhold from its citizens, the privilege of using its public highways for the purpose of transacting private business thereon; and that therefore the legislature might grant the right on such conditions as it saw fit to impose" (p. 591). This Court, while agreeing that the use of the public highways for private profit was a privilege that might be entirely withdrawn, held that it nevertheless could not be granted subject to an invalid criterion, and reversed, saying:

> "We hold that the act under review, as applied by the court below, violates the rights of the plaintiffs in error as guaranteed by the due process clause of the 14th Amendment; and that the privilege of using the public highways of California in the performance of their contract is not and cannot be affected by the *unconstitutional condition* imposed" (p. 599).

Similar reasoning would apply here if the petitioners were correct in their view that a right to speak in public places is no part of the right of free speech. Permission to speak being conditioned by the ordinance upon an invalid criterion, namely anticipation of disorder, it is immaterial whether Jersey City could bar meetings in public places entirely. In any event, the standard carried by the ordinance is a previous restraint upon freedom of speech, and as such unconstitutional.

---

* To the same effect, see, *e. g., Hanover F. Ins. Co.* v. *Carr,* 272 U. S. 494 (1926); *Power Mfg. Co.* v. *Saunders,* 274 U. S. 490 (1927); *Foster Fountain Packing Co.* v. *Haydel,* 278 U. S. 1 (1928); *Phillips Petroleum Co.* v. *Jenkins,* 297 U. S. 629 (1936).

B. Viewed even as a general police regulation (as distinguished from a previous restraint prohibited under any circumstances), the ordinance is void because unreasonable in the light of the underlying facts.

We have shown in A above that the standard of anticipated disorder renders the ordinance void as a previous restraint, whatever the facts or circumstances to which it is sought to be applied. But even if the ordinance is viewed not as a previous restraint incapable of validation by any factual background, but as an ordinary police power regulation and so to be judged, it is still void. For the constitutionality of police regulations is dependent upon their "reasonableness" and it is in this connection that this Court has laid down a factual test. "Underlying questions of fact may condition the constitutionality of legislation." *O'Gorman & Young* v. *Hartford Fire Ins. Co.*, 282 U. S. 251, 257 (1931). The underlying facts in this instance not only demonstrate the lack of necessity for conditioning the right to speak in public places upon prevision of disorder; they affirmatively demonstrate that there is no such necessity.

The notion of "due process of law" as a substantive guaranty embodied in the Fourteenth Amendment is a relative one. Substantive due process means a balancing of conflicting rights which is reasonable in the light of the underlying facts.

Here the right of free speech—said by Mr. Justice CARDOZO to be "the matrix, the indispensable condition of nearly every other form of freedom" (*Palko* v. *Connecticut, supra*)—is said to conflict with the right of the public to be free of disturbance and disorder, and the conflict is said to necessitate the denial of all right to speak in public places when disorder is anticipated.

Yet no facts were adduced before the District Court to show the barest excuse, much less a necessity, for such a

denial. On the contrary all of the evidence indicates that Jersey City is not different from any other community in the United States; its residents are law-abiding and had for years heard minority views expounded within the City limits without "riots, disturbances, or disorderly assemblage". As a matter of fact, the petitioners boast of the peace and quietness of their city (R. 1322-31, 1570-1). The past experience in Jersey City fails, therefore, to demonstrate any need for a municipal regulation in the restrictive form adopted. There is every reason to believe that the petitioners' police force is entirely adequate to quell any disturbance which might arise.

The District Court correctly held that the constitutional alternative to suppression was adequate police protection, and the Circuit Court affirmed, saying: "The function of the police at public meetings is not to prevent speakers from presenting their views but to preserve order while they speak. Otherwise, freedom of speech and assembly is destroyed" (4 R. 115).

And country-wide experience both here and in England similarly indicates that public places have been a forum for debate time out of mind, that disorder in public places occasioned by popular revulsion against the expression of minority views is fortunately a phenomenon so sporadic and infrequent as to be negligible. As Judge Biggs pointed out:

> "In New York and London, cities possessing populations as diverse as Jersey City, free speech and free assembly are allowed as a matter of course and speakers may there call even for the destruction of existing laws and governments and be received with tolerance and amusement" (4 R. 114).

If the thousands of other metropolises in this nation can manage to maintain public order without such ordinances as the one here in question, no reason appears why Jersey City cannot do the same. The ordinance lacks "the

sanction of general assent and practical experience" (minority opinion in *O'Gorman* case, *supra*, p. 70). Indeed the history of free speech joins with reason in teaching that true freedom of speech is a safety valve which *prevents the outbreak of violence* by canalizing resentment into channels of the spoken word rather than the deed.*

There is, then, an utter absence of factual justification for the kind of condition here imposed. In the absence of such a factual basis the standard must be held to be "unreasonable", and, by the same token, void. It rests on no "rational basis consistent with constitutional right." *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194 (1934). Operating as it does on a factual background which rebuts the necessity for its existence, it serves only to enable police officers to work out an area of suppression which coincides with their own prejudices.

If it could be said that some facts exist which might conceivably justify a criterion for the issuance of permits designed to preserve the public peace, we should still have to answer the question whether the interest of the public in the maintenance of public order is so vitally challenged by meetings in public places as to justify a limitation on the latter in aid of the former. In this connection the concurring opinion of Mr. Justice BRANDEIS in *Whitney* v. *California*, 274 U. S. 357 (1927) (HOLMES, *J.*, with him), is of paramount significance. Mr. Justice BRANDEIS there considered the constitutionality of a statute imposing *subsequent punishment*. Weighing the relative public interests in free speech on the one hand and maintenance of peace and good order on the other, the Justice held that it is only an "emergency" or "serious injury to the state" (organized society), which can serve to justify *even subsequent punishment* for exercise of the right of speech. Obviously what cannot be made the basis for

* Thomas Jefferson said: "We have nothing to fear from the demoralizing reasonings of some, if others are left free to demonstrate their errors. * * *." Quoted by C. A. Beard, 123 The Nation, p. 8.

punishment after a person has spoken, cannot be a valid ground for prohibiting him to speak. The Court's attention is invited to the quoted portion of Mr. Justice BRANDEIS' opinion (pp. 376-8) as typical of what this Court has repeatedly held:

> "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated. * * * Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is, therefore, always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it.

> "Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society. A police measure may be unconstitutional merely because the remedy, although effective as means of protection, is unduly harsh or oppressive. * * * The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state. Among freemen, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgement of the rights of free speech and assembly."

Both the District Court and the Circuit Court have found a complete lack of basis for the belief that disorder was reasonably to be anticipated if the plaintiffs were permitted to speak in Jersey City, or more generally, if the expression of minority views were permitted in Jersey City. *A fortiori* there was no evidence of a "fear of serious injury", or "reasonable ground to fear that serious evil will result", that "the danger apprehended is imminent", that "the evil to be prevented is a serious one"—in a word, that there was "*an emergency*" which might conceivably justify "repression".

And so, even if the standard of anticipated disorder did not render the ordinance a prohibited previous restraint, it would be void by application of that factual test of necessity to which all police regulations must conform under the Fourteenth Amendment.

"Believing in the power of reason as applied through public discussion," the framers of the Constitution "eschewed silence coerced by law—the argument of force in its worst form." BRANDEIS, *J.*, in *Whitney* v. *Califor-*

nia, supra, pp. 375-6. The condition prescribed by the Jersey City ordinance is "the argument of force in its worst form"—indefensible under the Constitution, and both lower courts rightly held that it could not be applied to gag the respondents.

C. The ordinance has been applied to the respondents in an arbitrary, unreasonable, discriminatory, and therefore unconstitutional manner.

The foregoing supports the holding of the courts below that the standard of anticipated disorder carried in the ordinance is invalid on its face. The courts below also held that the ordinance, whether or not the standard prescribed is valid on its face, had been applied to the respondents in an arbitrary, unreasonable and discriminatory manner. This latter holding, based on detailed findings made by the District Court (Findings E-1-7; Conclusion 6) and confirmed by the Circuit Court of Appeals (4 R. 117-9) is sufficient in and of itself to ground the injunctive provisions now under consideration. Although respondents might well rest on the concurrent findings without more, they shall show briefly by reference to the record that the findings are sound; that disorder could not reasonably have been anticipated either from the proposed speakers or from the audience; that petitioners are themselves chargeable with having inspired, fomented and even subsidized the manifestations of "protest" upon which they purport to have acted in denying permits; that the whole course of official action has been instinct with dishonesty and discrimination; and that the true ground of denial of permits was nothing more than petitioners' opposition to the social, political or economic views supposed to be entertained by the respondents, and the petitioners' fear that their political dictatorship would be undermined.

1. *There Was No Reasonable Apprehension of Violence or Provocative Behavior on the Part of the Applicants for Meetings.*

> **"We can find no competent evidence from the record before us that violence or disorder would have resulted either from the meetings which the [respondents] desired to hold or from the words which the speakers were likely to deliver at such meetings"** (Opinion of Circuit Court of Appeals, 4 R. 117).

a. *Speakers' past experience on the speaking platform.* —The Director of Public Safety, when asked whether he considered the past performance of a particular speaker in weighing the question of granting a permit, responded, as if it was a new idea but a good one, that he did (R. 560-1). But in point of fact he made no such investigation of Representative Maverick (except to admit that Maverick spoke at a hall meeting in Jersey City and there was no disorder) (R. 561); nor of Representative Allen (R. 561-2); nor of Representative O'Connell (R. 562, 838-40); nor of Morris Ernst* (R. 564)—these constituting the whole roster of speakers applied for by A. C. L. U.

As to the speakers mentioned in the several applications for permits other than A. C. L. U., there is likewise no testimony that an investigation of past experience was made.† The findings that there was "no competent proof" that any of the speakers had ever given reasonable grounds for belief that breach of the peace would result from his utterances (E-4-6) are plainly correct.

---

* On cross examination Casey's recollection was refreshed to the extent of recalling a press report of a speech made by Ernst in Washington on or about December 17, 1937. It is obvious, however—as Casey in effect admitted—that this could not have affected his decision on the A. C. L. U. application (R. 824-31, 854-5; Exh. D-1).

† On cross examination Mayor Hague testified that he believed Roger N. Baldwin (one of the proposed speakers named in the C. I. O. application) had "transcended the bounds of free speech" in his remarks before the Fish Committee in 1931 (R. 1480). There is no evidence that Mr. Baldwin's statement (Exh. D-27) resulted in disorder when it was made; it will be seen on inspection to be a mere statement of the "clear and present danger" rule as enunciated several times by this Court; and could certainly not form a rational basis for denying Mr. Baldwin the right to speak seven years after the event.

b. *Identity and affiliations of applicants.*—Director Casey at one point observed that he considers "names". Thus (R. 545):

> "Q. Do you pay attention to the applications that come in, *to the names of the persons who are to speak?* A. *Yes, I do.* I look it over.
> "Q. *That is important?* A. *Yes, very much.*"

When pressed, however, Casey lost his assurance. Sometimes he investigates the speaker; sometimes he gets in touch with the speaker and asks questions; but he does not remember a single case where he did so before the present difficulty (R. 544-5). Indeed, as to certain meetings he finally concedes—neatly contradicting himself—that the names of speakers are quite unimportant (R. 548-9). Certainly the name of the speaker was unimportant (*i. e.*, favorable to the applicant) in the case of the Whig-Cliosophic application for Senator Borah (R. 592-3); in that case it was the "auspices" that controlled (R. 637-8; 593-5). But, considering cases of protests against speakers sponsored by the Socialist party on the one hand and by the Republican party on the other (in the first case he would deny the permit, in the second he would grant it), "It is not the party, *it is the man, the individual,* Counsellor, that is going to talk, that is going to cause the trouble. Q. That is the real pivot? A. That is the real issue. and I guess you are aware of it" (R. 637). Thus a second contradiction.

The theory of "names" to one side—since theory is obviously not the Director's strong point—in practice Casey does animadvert on the proposed *affiliations* of speakers in denying applications made on their behalf. In denying a permit, he spreads himself on Representative O'Connell's tour of Spain, allegedly as the guest of the Communist party (Exh. P-31). Similar comments are contained in other letters of denial. Mayor Hague, of

course, stressed throughout the alleged connections of persons and organizations who applied for permits with a melange of persons and organizations deemed by him to be subversive. Both presumably derived their information from newspapers, which they read "between the lines" (R. 563).

It has been noted that the only support for the claim of "subversiveness" came in the form of newspaper clippings and the like (Exhs. D-9-11, 14, 16-27) introduced on petitioners' cross examination and admitted solely as furnishing the alleged basis for the petitioners' state of mind (R. 1416, 1429, 1433, 1590 ff). It need merely be said that the exhibits—a carefully selected set of calumnies much of which does not even have a verbal connection with these respondents—are, as the District Court said, hearsay "not single but triple" (R. 131). The concurrent findings clear the respondents of any charge of subversiveness (B-4-5).

c. *What the speakers proposed to say.*—At several points, the petitioners indicated that they feared disorder might be occasioned by the substance of the proposed speakers' remarks, thus disregarding the peaceful past history of the speakers and their sponsors. Director Casey believed, he said, that "The applicant by his talk can create a disturbance" (R. 560), and he agreed that "in advance of what * * * speakers might say you have to come to the conclusion as to whether their words might create what you call mob disorder" (R. 620). Casey has, however, "no rules and regulations" governing permissible subjects of discourse (R. 567). He says he never asks a speaker to specify in advance what he proposes to talk about; indeed, he claims no such power under the ordinance (R. 554). But in connection with at least one application—A. C. L. U.—Casey did enter into a prolonged debate with the applicant as to the subject mat-

ter of the proposed meeting and as to the existence of civil liberties in Jersey City* (R. 32-33, 35-7, 555-7, 564-7).

From the welter of contradictory statements by Casey it is not clear what he really thinks on this subject; it is enough to say, however, that the defense nowhere asserted that the stated subjects of the meetings in question were in any respect improper; and Casey himself finally conceded that he did not deny the applications on the basis of provocative subject matter (R. 569).

d. *The exploded theory of "invasion".*—Similarly ineffectual was the attempt to magnify and exploit the episode of November 29 as an indication that these plaintiffs were, in the language of the answer, engaged in an attempt "to intimidate the police and authorities of the City of Jersey City and to create disorder, confusion and riot" (R. 59).

There is much talk in the record of an alleged threat of "invasion" by respondent Carney, regional organizer for C. I. O. It may be enough to say that such a threat, even if made, would have been an act of the C. I. O. and no one else—it could have no reference to A. C. L. U. or the several other organizations whose applications for public meeting permits were denied; that the applications for A. C. L. U. and C. I. O. were denied a month after the alleged threat, and the applications of the various other organizations were denied as much as five months after the alleged threat.

The strongest answers to the theory of "invasion," however, are that the City authorities had no real basis for believing that such a threat had been made; and that the threat, even if made, did not materialize. The Mayor admitted that the first report of a threatened "invasion"

* Casey wrote in part (Dec. 22): "You informed me * * * that the purpose of the meeting is to petition the Mayor and other responsible officials for the expression of free speech, free press and other civil liberties. Since these rights and the other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated."

by Carney appeared in the Newark Sunday Call of November 21, 1937 (R. 1338-40; see R. 1450). The text of that article contains no threat of invasion or disorder (Exh. P-40; R. 1341). The headline did indeed mention "invasion"; but it is evident to anyone who reads the article, and must have been evident to the Mayor and Casey, that this was pure fancy on the part of the headline writer, since it found no basis in the story itself. The later newspaper reports appearing in the Bergen Record,* Newark Evening News (Exh. D-15), Hudson Dispatch and Jersey Journal, all published on dates later than November 21 (R. 790, 553, 1447-8, 1450-1) are variants or rehashes of the original item in the Sunday Call; besides, they are mutually contradictory, one mentioning 3,000 intending distributors, another 2,000, and so on.

The credence which the Mayor and Casey say they gave to the more lurid reports of the "invasion" contrasts strangely with their skepticism toward newspaper reports in general, and particularly toward newspaper reports reflecting unfavorably upon themselves. Thus Casey says, referring to a printed statement purporting to have been made by himself, "I know it was a darned lie, for I never interviewed the man, or he never interviewed me" (R. 851, 786-7); and, "My gosh, you hear a lot of stuff" (R. 851). The Mayor complained bitterly that the press had misrepresented him, especially in respect of the notorious "I am the law" (R. 1235-7). Still Casey and Hague believed—or said they believed—what they read in certain newspapers about Carney's threat of "invasion", pyramided upon a newspaper report which was admittedly innocent. They concededly made no effort whatever to communicate with Carney himself (R. 554, 1040).

Whether or not the officials had reasonable ground for apprehending an "invasion" on November 29, it is impos-

* Until reminded of the article in the Newark Sunday Call, Hague stated that the report in the Bergen Record was the first; that a shorthand report had been taken of Carney's declaration (R. 1097-8). The stenographer was not produced.

sible to believe that that apprehension could carry over to the denial of permits a month and more later, since the "invasion" turned out to be nothing of the kind. The Mayor, who decides such questions as "invasion" (R. 1096-7) defined that phenomenon as ten or more men "armed to the teeth, to destroy life and property" (R. 1040; see R. 1037-42). He conceded that no such thing occurred on November 29. "No, he [Carney] was afraid to" (R. 1040, 1100, *et circa*). Moreover, all of the credible evidence indicates—and the defense made no effort to refute it—that the episode of November 29 was wholly peaceful so far as the distributors were concerned; it was an orderly test of an ordinance which could not otherwise be tested, and which was in fact unconstitutional. This dud of an "invasion"—sired by the imagination of a headline writer and never emerging in fact—was simply seized upon by the City officials as a convenient excuse for the police exhibition of November 29 and for the official course of conduct to the date of the trial.*

The conclusion is inescapable, on the basis of all the foregoing, that the officials had no reasonable ground for believing—and in fact did not honestly believe—that the applicants for public meetings would have created riot or disorder by what they would have said or done had the permits been granted. Indeed petitioners do not now contend that disorder was threatened or believed to be threatened on the part of the applicants.

---

* Judge DAVIS' reliance in his opinion on the "invasion" reports (4 R. 157-8) takes no account of any of the factors above set forth.

2. *There Was No Reasonable Apprehension That Those Who Chose to Attend the Meetings Would Have Created Riot.*

> **"Nor was there any reasonable apprehension that the public in Jersey City would have rioted"** (4 R. 117).

Being unable to support the position that the permits could properly have been denied by reference to possible incendiary gestures by the proposed speakers, the petitioners executed a *volte face* and said that what they really feared was violence on the part of those residents of Jersey City who might choose to attend the meetings (*be it noted that there is no compulsion on any citizen to show up*). Casey says he was disturbed by the temper of the people as manifested by letters or resolutions of protests lodged with him, by the "patriotic" meetings held in the City, and the like. Thus Casey (R. 569):

> "Q. So you denied the permit without any regard to what the speakers would say, *and solely because of the protest?* A. The protest, yes."

a. *"Protests": letters and resolutions.*—The proposition that protests were used as a significant index of possible riot may be tested by reference to the A. C. L. U. and C. I. O. applications. Both of these applications were denied or in effect denied by December 30, 1937. It is more than fair to the City, then, to consider the protests which reached Director Casey's office up to and including January 1, 1938.

By omitting date references in their so-called "Statement of the Case", the petitioners have attempted to cover up the following facts: Not more than fifteen letters or resolutions of protest were received by Casey on or before January 1.* Of these not more than six (lib-

* "Barrels" of protests promised by counsel for the petitioners did not materialize.

erally construed) as much as mentioned A. C. L. U. or C. I. O. These six are resolutions or letters from the Jersey City Real Estate Board dated December 14 (R. 821-2) and December 30 (R. 685); the Community Center, December 30 (R. 685-6); Italian War Veterans, December 29 (R. 686); Hudson County Post No. 2, undated (R. 687); a veterans' meeting, December 28 (R. 39). Not a single protest referred to in the entire record threatens violence by anyone; but one protest (veterans' meeting, December 28) predicts that there may be violence, presumably on the part of other people. The protests are merely couched in terms of opposition to subversive ideas. Certainly it is a gratuitous insult to the organizations above-named to suppose that they would be so unmannerly, not to say lawless, as to break up any meeting.

We need hardly pause to note that Casey, although apparently placing great emphasis on the protests, simply noted their arrival and filed them (R. 638-9); "at times," he says, he investigates protests to check on their authenticity, but he cannot name a single instance where he did so (R. 639); "at times" he inquires to see whether the address given is a *bona fide* address, but he cannot name one instance where he so inquired (*id.*); he is not interested in the form of the protest as an index of its value (R. 640, 683-4); he is utterly unconcerned with the genuineness of signatures, duplications, *etc.* (R. 694-7, 699).

A more striking fact is that there is no evidence of any protest specifically lodged against several of the meetings other than A. C. L. U. or C. I. O. for which permits were denied in the period from December, 1937 to June, 1938.

And plainly, if the theory was adopted that a half dozen protests against a particular meeting are proof of prospective violence and justify the denial of a permit, no one could speak anywhere in the United States—the writing of letters and the adoption of resolutions being inveterate habits of the American people. More than six protests could be gathered at any given time against the

appearance in public of any man including Justices of this Court (see R. 570-1). Petitioners are not so naive as to be unaware of this. With commendable frankness, therefore, they admitted that protests would be disregarded if they were lodged against Republicans (R. 637-8), the Chamber of Commerce (R. 1363), or other "high class" organizations. There was, moreover, a peculiar lack of responsiveness when the question was asked whether protests would be considered if Mayor Hague applied for a permit (R. 558).

b. *"Protests": the veterans' meeting.*—Stress was laid by the defense on the meeting of veterans which occurred on December 28 and resulted in the resolution of protest to which reference has been made (R. 39).* Although the protest did not in itself threaten violence, it predicted that violence might occur. Casey, in denying the C. I. O. application under date of December 30, said in part (R. 38-39):

> "On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over three thousand persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of the permit. Violent disorder was threatened on the part of the veterans in case the meeting was held. Announcements were made from the floor—and these announcements had the approval of the meeting—that if I should refuse to honor the Veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the Veterans at the meeting."

---

*The veterans' meeting of December 28 was the only one which could have affected the consideration of the A. C. L. U. or C. I. O. applications. The rest occurred after January 1, 1938.

But the tendentious "announcements from the floor" boil down merely to the threat of one Brophy that the veterans would apply rubber hose in the event the application of A. C. L. U. or C. I. O. was granted (R. 658, 724, 1093). On hearing the threat Casey caused an investigation to be made by the Chief of Police (R. 658-9, 725) and himself issued a statement to the press critical of Brophy (R. 1094, 1118). The Chief of Police reported that Brophy "was saying what he didn't mean" (R. 658), and that it was "just an idle jest" (R. 725). Mayor Hague was also of the opinion that it was "a joke"; "That is a statement, as I assume, from a man who is enthused, a little bit more enthusiastic than the average man, and they make statements like that. They don't ever amount to anything, Counselor" (R. 1094). So much for the Brophy threat.

Both Casey and Hague were closely questioned as to whether the leaders of the veterans would themselves engage in violence. Both rejected this supposition—Hague with some heat—on the ground that these gentlemen are "law abiding citizens" and "leaders of public opinion" (R. 1306, 1307). As a matter of fact, Hague pointed out with just pride that the veterans did not appear in Journal Square on May 7 or May 27 (O'Connell) with rubber hose (R. 1094). Finally, *Hague flatly conceded that he never anticipated any disorder from the veterans* (R. 1093-4):

> "Q. Now, as a matter of fact, did the veterans appear that night with rubber hoses? A. I do not know, I don't think so; I wasn't there.
>
> "Q. As a matter of fact, they didn't from the newspaper report, did they? A. No, they didn't. That is a statement, as I assume, from a man who is enthused, a little bit more enthusiastic than the average man, and they make statements like that. They don't ever amount to anything, Counselor. *They don't disturb me because I never anticipated any disorder.*"

The court below properly stated upon review of the record that "Mayor Hague * * * made plain his belief that * * * there was no real danger of physical violence from the veterans' organization" (4 R. 105).

c. *Putative size of anticipated disorder.*—Even if disorder could reasonably have been anticipated, the question remains, how much? While emphasis was placed by defense counsel on the word "prevent" as it appears in the ordinance, involving, according to them, the rule that meetings might be denied if there was *any* apprehension of violence, irrespective of its size, Director Casey was more realistic. He concedes that if but two or three hoodlums showed up they could be easily quelled (R. 635-6), and that apprehension of a disturbance of that size could not be proffered as a reasonable excuse for denying a permit. Again, despite some vacillation, he is of the opinion that his forecast of whether the anticipated disorder will be so large as to be uncontrollable, or so small as to be controllable, is an important factor in deciding whether a permit should be granted (R. 619-27, esp. 627). While mob psychology is a "funny thing" (R. 616), he is constrained to admit that he must decide whether "a lot of police" or few police would be needed to maintain order (R. 609-17) and would rule on a permit accordingly.

It is impossible to believe, on the basis of the record facts above analyzed, that any disturbance not preventable by a simple admonition of Director Casey or Mayor Hague or, at worst, an appropriate show of force, would have occurred had the A. C. L. U. or C. I. O. application been granted. And the court below expressly found, "It in no wise appears * * * that the police of Jersey City would have been powerless to maintain order at any meeting proposed by the [respondents]" (4 R. 106). This conclusion is reinforced by Casey's admission that there has not been a single arrest for disturbing a meeting in Jersey City during the past year (disorderly conduct)

(R. 700), and by his expressed confidence in the police (R. 620); by Hague's boast that Jersey City is a law-abiding community with a low crime record (R. 1322-31, 1570-1); and by the past experience of Jersey City with meetings at which minority views were expressed (R. 1117, 1121-2, 1124, 1134, 1364-5).*

The conclusion is clear as to the A. C. L. U. and C. I. O.; it is clear beyond possibility of doubt as to other meetings for which permits were denied during the period in question, such as the Catholic Workers, the Whig-Cliosophic Society of Princeton, the Independent Speakers' Association, *etc.*

In point of fact, Hague himself was at a loss to explain the denial of the permit for Senator Borah; *the best he could do was to suggest that the application might have been denied because it was in telegraphic form* (R. 1307-15)!—although the letter denying the application gives disorder as the reason (Exh. P-16), and Casey maintained throughout that this was the sole reason for the denial (R. 616). Similarly the defense at some points became so embarrassed by the facts that it began to waver on the reason for the denial of the A. C. L. U. application (at R. 808-9 it is suggested that the reason was that the City has no jurisdiction over the court-house plaza—but the application was not so confined; at R. 819, that A. C. L. U. had not persisted in its application—pure fabrication).

3. *Official Inspiration, Fomentation and Financing of Demonstrations of "Protest".*

> "There is evidence that Mayor Hague and his associates inspired at least some of these protests. The evidence is uncontrovertible that he was the spearhead of the movement to keep the [respondent] labor groups out of Jersey City" (4 R. 105). "The cries of impending riot raised

* There is record evidence that as many as 500 policemen were summoned to patrol a particular assemblage, apparently without dislocating the police service in the city (R. 333, 888, 449; see R. 589-90, 45-6).

> by [petitioners] are not candid. In other words, Mayor Hague and his associates, reversing the usual procedure, troubled the waters in orders to fish in them" (4 R. 115). "The record, however, presents an extraordinary fact. The Mayor of Jersey City and the other [petitioners] endeavored to build up a dangerous situation, one in which the sympathizers of the [respondents] could not safely speak. That such efforts did not result in actual danger seems to us to have resulted rather from the good sense of the citizens than from the good will of Mayor Hague and his associates" (4 R. 117-8).*

It has been shown that the prospect of disorder on the part of the members of the public was a convenient myth—even if the demonstrations and letters of "protest" were *bona fide*. The picture which emerged at the trial would not fully appear to this Court, however, if the true origin of the "protests" were not appreciated. Although counsel for petitioners early in the trial denied the charge with considerable emphasis, even to the extent of agreeing that proof of the charge would be fatal to their case (R. 304, 619) it is clear beyond serious debate that the demonstrations of protest were inspired, fomented and partly subsidized by the petitioners themselves.

The Mayor frankly confessed from the witness stand that he deemed it his official duty to repel the advance of the respondents and the forces which to his mind were aligned with them; it was to this end that he "engineered" and worked "day and night" (R. 1074).

---

* Judge DAVIS states in his opinion (4 R. 161) that the trial judge refused to find that petitioners "had incited or stirred up the people to protest" and that the majority of the Circuit Court of Appeals was in effect overruling the trial judge on this point in making the findings quoted in the text. The reason why the trial judge omitted to make findings on the question of fomentation is sufficiently described in the opinion of the majority of the Circuit Court of Appeals (4 R. 117): the trial judge found fully on the question whether there was any reasonable probability that the *speakers* would cause disorder; in his view that was the test, and the only test, to be applied if a previous restraint was admissible under any circumstances. Since he regarded threats of riot on the part of the audience as being no valid ground for denying a permit, he thought it unnecessary to make findings on the question of fomentation. Thus his omission to find fomentation is not an indication that he did not believe fomentation was proved.

The record is shot through with intemperate and unfounded abuse by the Mayor of the respondents and their supposed associates. His offensive gossip from the witness stand, however, pales by comparison with his public utterances during the period from late November to the time of the trial. Some of these speeches, proclamations and appeals to the public appear of record (Exhs. P-42-46); some indication of their content has been given above. It is enough to say that they were designed to rouse the rabble; if the public mind was indeed inflamed against respondents, as petitioners suggest, then the Mayor was the cause of it. In point of fact he does not deny the charge, although his counsel may; he glories in it.

It has been shown in detail that the veterans' meeting of December 28, resulting in the resolution of "protest" to which the Director of Public Safety referred in denying the C. I. C. application for a permit, was not a spontaneous affair. Not only was the voice of the veterans the voice of Hague; it spoke at the precise time deemed strategic by Hague and Casey. As to the "Important Notice" signed "Message from Mayor's Office" Hague frankly admitted that it might well have been deemed to be authentic by those who received it because the Mayor was identified with the "movement" (R. 1063):

> "No, that came from the veterans, you can see that, and they assumed that the message come from the Mayor's office because of my activities in this movement. W[illegible] they wanted to impress upon the veterans, and t[illegible]usands of them is my personal friends, *that I was interested and that this was approved by the Mayor and my associates, which we did, we approved of everything now; we are not shirking any of that.*"

The affair of December 28 discloses the astounding phenomenon of a high governmental official, charged by law with responsibility for maintaining the peace, deliberately withholding action upon an application in order to allow

time for the stimulation of a condition of prospective disorder on the basis of which the application could be denied. This is shown not only by analysis of dates and circumstances but by the best evidence possible, namely, Casey's letter of denial, which reads in part as follows (R. 38):

> "On receipt of your letter, I sent you a communication, dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all of the facts and circumstances pertinent to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain Veterans' organizations of Jersey City, protesting against the granting of a permit to Roger N. Baldwin or to any members of the group he represents, to hold a meeting. *The letter demanded that I withhold action on your application.* I attach a copy of the Veterans' letter to this communication."*

Unmistakably the same forces were at work in inspiring "protests" by other organizations; the "protests" were never more than an echo of petitioners' repeated diatribes and were the intended results of their activities.

The analysis could be supplemented by a consideration of the "patriotic" rally in the Jersey City armory held on January 6, also commented on above. Of this rally the Circuit Court of Appeals properly said: "The record indicates that the calling together of these organizations was done upon the instructions of Mayor Hague and that he himself actively collaborated in procuring the record attendance at the armory" (4 R. 105). It is, however, needless to pile on details, in the face of Hague's extraordinary admission that he personally assisted in financing the demonstrations of "protest" (R. 1359):

---

*Judge DAVIS' reliance in his opinion on the veterans' resolution (4 R. 154-6) takes no account of the factors showing fomentation.

"Q. Mayor, there were various meetings and parades at the Armory, Chamber of Commerce, public square meetings, particularly those referred to in connection with the leadership of Mr. Kelly. I want to ask you whether you contributed any money whatsoever for any of those gatherings, whether for flags, billboards, notices, cards or any other of the instrumentalities used to organize the protests.

"Mr. Matthews: I object as immaterial, whether he did or not, or irrelevant.

"The Court: I will allow that.

"Mr. Matthews: Your Honor will allow an exception?

"The Court: Yes.

• • • • • • • •

"A. Offhanded I cannot just exactly say, I think I contributed, Counselor, offhanded; if you will allow me I could get you the amounts.

"Q. Would you know approximately the amounts? A. No, it is several hundred dollars, I think, more or less, not much."

To petitioners' sins of commission is added a significant sin of omission. There is every reason to believe that a word from Hague to the veterans and other groups would have caused a reversal of their supposedly bellicose attitude. He can muster the veterans for parades and other "patriotic" demonstrations without the slightest difficulty (R. 1060). His relations with civic and fraternal bodies are also intimate. There is no reason to doubt that if he whispered a word to these protestant groups they would keep the peace;* it is, moreover, admitted to be the duty of the Chief of Police to warn intending trouble-makers (R. 618-9, 653). The Mayor, however, never told these groups to behave, nor did the Chief of Police. The reason is plain. Hague did not want them to behave; he

* The Mayor conceded that Casey's statement to the press anent Brophy was sufficient to control that kind of conduct—"I imagine so" (R. 1094).

wanted, at any rate, to leave the impression that they might not behave. He was "not desirous of asking them to be less aggressive" because he felt "it was justified" (R. 1118; see R. 1060).

When the specious character of the manifestations of protest is borne in mind, the full significance of petitioners' views on the durability of protests may be appreciated. No more crushing commentary on the official policy toward free speech can be imagined than the following discussion on what we have termed the "immortality of protests" (R. 1360-1, 1362-3):

> "Q. Now, Mayor, how would an applicant, whom you term undesirable, ascertain whether or not you have come to the conclusion that the temper of the people is such that they wouldn't be offended if he came in to speak? A. Well, it is a simple matter for us to determine who would be undesirable.
>
> "Q. All right. A. From the expressions. Various civic and fraternal orders and the veterans, as they have expressed themselves in the past. *Now, I assume that if there is a protest filed with me or filed with the Director of Public Safety today, six months from now that same protest still remains until changed by those who file it.*"
>
> • • • • • • • •
>
> "The Witness: What I meant, your Honor, to the counsel's last question was that where a group of men and women—where there is an uprising in the form of a protest, if they file petitions with the governing body, that that protest about a certain condition, let us say about some condition of a gas station or some condition, we always assume, Counselor, that that protest still remains unless those folks come down and say that they have withdrawn their opposition. That is the rule of the governing body.
>
> "Q. Now, Mayor—— A. (Continuing.) The zoning condition, now we always have assumed that where a group of taxpayers have formed themselves into some society and they protest, well, now, not as

long as that society allows that protest to remain on file shall that gas station or that zoning ordinance be complied with.

"Q. And you treat the applications for the right of meetings exactly as the zoning protests? A. *That is the rule, if a thousand men or a thousand women assemble and protest about a condition we assume that that condition, that they still remain hostile without they notify us by writing; otherwise, Counselor, they would be meeting every week.*"

We conclude on this phase of the case in the words of the Circuit Court of Appeals: "The whipping up of public indignation and public clamor to the end that free expression of opinion and free assembly may not be had sets with little grace upon the officials of an American city" (4 R. 119).

4. *Outright Discrimination Apparent on the Face of the Record.*

> "While permits were refused to these persons [sponsored by respondents] * * *, other groups whose views were not at variance with the opinions of the majority of the inhabitants of Jersey City received permits freely or the requirement of a permit was waived" (4 R. 105). "Discrimination is therefore plainly shown" (4 R. 118).

Outright discrimination in the enforcement of the ordinance as to public meetings is shown on the face of the record. During the period here in question permits were uniformly denied to those groups which, by petitioners' admission, are regarded by them as "undesirable", while permits were freely granted or not required at all for meetings sponsored by groups which, again by petitioners' admission, are regarded by them as "desirable" or "high class". Thus permits were denied not only to respondents C. I. O. and A. C. L. U., but to the American Whig-Cliosophic Society of Princeton University (Senator Borah was the proposed speaker), the Catholic Workers group, the Inde-

pendent Speakers' Association, the Longo Defense Committee, the Hudson County Committee for Labor Defense and Civil Rights, the Socialist Labor Party and the Socialist Party (Norman Thomas); but permits were granted to the Jersey City Veterans Law and Order Committee (parades) and the War Mothers (parade), and the requirement was entirely waived in connection with various assemblies of veterans and others "protesting" against the very meetings that had been denied (R. 27-46, Exhs. P-16, 17, 29, 31; R. 1578-1583, 700-723, 1119). In order to credit the petitioners with good faith in the administration of the ordinance, this Court would have to indulge the hypothesis that meetings of "undesirables" (including Senator Borah) invariably threatened disorder, while meetings of "desirables" invariably betokened peace. The hypothesis is a severe strain on credulity, especially when it is remembered that the City authorities, if they are to be believed, were especially apprehensive of violence on the part of the veterans should the applications of "undesirables" be granted;—yet it was this supposedly lawless group that was not only granted permits but allowed to foregather without even having applied for permits!

The question of the waiver of permits in the case of "desirables" elicited some peculiar ratiocination by Casey and Hague. Monster meetings occurred in Journal Square and Pershing Field by prearrangement, and after announcement in the public press (see Exh. P-29),—all to the knowledge of the City officials. These meetings were called for the purpose of protesting against the appearance of certain speakers in Jersey City, although judging from the behavior of the crowd (witnesses testified that Norman Thomas was "cheered" and that the crowd's reaction to Representative O'Connell was friendly, R. 406, 444, 448-9, 962), it appears more probable that the great bulk of those who attended were there to welcome the speakers rather than to protest against them. Whatever may be the fact as to this, undoubtedly the meetings were substantial in

size. When Casey's attention was called to the fact that these assemblages were held without as much as a by-your-leave, he opined that the ordinance does not cover the case of a prearranged meeting *to protest against a speaker* (R. 700-23). Mayor Hague was of the same opinion (R. 1119). It is needless to say that no justification can be found for any such interpretation of the ordinance, and the District Court so stated (R. 721). Further, it is undenied and the witness Carrick testified that political meetings of the Democratic and Republican parties have been held in Jersey City time out of mind *without permits* (R. 453).

Plainly, the ordinance has been administered dishonestly and with gross discrimination against the respondents and organizations and persons believed to be connected with them. The concurrent findings to this effect rest on solid fact.

Judge DAVIS' view that discrimination was not shown is rebutted not only by all the record evidence here analyzed but by the significant fact that he himself concurs in the findings and holding of the rest of his court as to every substantive issue other than that of public meetings (R. 142-3). Thus he grants that petitioners discriminated against the respondents as to leaflet distribution, display of placards, etc., but insists that no like discrimination was practiced against them in connection with public meetings. We submit, with deference, that Judge DAVIS' position is implausible on its face. It is not believable that the animus against respondents which pervades the record stopped short and checked itself on the single issue of free speech. The discrimination, stemming from a single "deliberate policy", extended also to public meetings and was in fact nowhere more plainly shown than in that aspect of the case.

5. *The True Reason Why Permits Were Denied: the Applicants Are "Undesirable."*

> **"The criterion imposed by the authorities of Jersey City upon t right to speak therein is simply whether or not the individual who is to speak is a right thinking person in the view of those who constitute the city authorities. No other test is applied"** (4 R. 118).

The true reason why permits were denied to respondents A. C. L. U. and C. I. O. and the other organizations which applied during the period from December, 1937 to June, 1938, is that petitioners do not believe in free speech for "Reds"—by which they mean some wild combination of things that cannot even be approximately defined. "Riot" and "disturbance" are shams and subterfuges. The City of Jersey City has simply been engaging in a heresy-hunt.

Director Casey's real views emerge in passages like this (R. 637):

> "Q. Now, Commissioner, if two or three thousand workers in the community resent a speaker for a particular political party, let us say, the *Socialist Party,* you then denied the permit, didn't you, because you thought there might be a disturbance? A. Yes, I did.
>
> "Q. Now, let's assume that two or three thousand people sent in protests and said there would be a disturbance if the *Republican Party* had a meeting, would you treat the two situations the same or would you discriminate? A. *Now, that is a different question entirely.*
>
> "Q. Just answer, would you treat them the same? A. I would not."

Thus, Republicans and Democrats are a class apart, to which the test of protests and riot does not apply. On the other hand, Casey admits in the record that certain organizations will be denied permits for no other reason

than that he does not approve of their doctrinal positions (see R. 595). Obviously such applications as that of the American Whig-Cliosophic Society of Princeton were and could have been denied on no other ground (see Hague, R. 1307-16).

The prime heresy-hunter is, of course, the Mayor himself. Here are the Mayor's views, which could be further exemplified from his testimony under direct and cross examination, on the subject of free speech for "Reds" (R. 1133, 1149, 1367; see 1363-4; 1128-9):

> "A. *I think the Reds have no right to express their views in Jersey City* if their intention is the overthrowing of our Government and the destruction of our American Government—*no, they have no right because they are not American citizens and they are undesirables and they should be driven out of this country, not alone the city.*
>
> "Q. Or put in a concentration camp in Alaska? A. And you believe as I do, too.
>
> "Q. Thank you, Mayor."
>
> * * * * * * *
>
> "Q. You have already defined a Communist, Mayor. Now, will you tell me how an American official should handle Communists? A. Suppress them.
>
> "Q. Suppression? A. If possible.
>
> "Q. And what methods of suppression would you use? A. *Well, just as we are suppressing them in this case, we are denying them the right to hold public gatherings because of the dangers of violence and bloodshed.*"
>
> * * * * * * *
>
> "Q. [Has a man the right] To urge the complete rewriting of the Constitution of the United States? Hasn't he got that right? * * * A. Certainly, they have a right to urge complete——
>
> "Q. Rewriting of the Constitution? A. (Continuing.): —rewriting of the Constitution, but *it depends, Counselor, who these people are. If they were high class citizens and they met in peaceful*

orderly manner, why certainly they have perfect rights; but if prior to that they were advocating the overthrow of the government, they were dissatisfied with everything that America offered to them, why of course I don't assume they have any rights.

"Q. You don't? All right. A. Because they are dissatisfied with the form, to begin with.

"Q. And you don't think that they have the right to urge peacefully the change in the form of government? A. They have no right providing there is opposition and providing there is a great uprising against that type of preaching."

Since the Mayor "don't assume they ['Reds'] have any rights" (R. 1367), it becomes interesting—even if supererogative for purposes of this case—to probe into the Mayor's definition of "Reds". On this point the confusion in the record reflects the confusion of the Mayor's mind: Thus: the Anarchists are Communists (R. 1256), the Socialists are Communists (R. 1257), the C. I. O. "movement" is Communist (R. 1079, 1050), A. C. L. U. is Communist (R. 1121). The Communists are "Reds" and *vice versa* (R. 1121). Various ill assorted people are "Communists", "undesirable", "objectionable" or "improper". Thus all the heads of C. I. O., with the notable exception of John L. Lewis, are "undesirable" (R. 1353-5, 1050). Speakers for whom application was made by C. I. O. are "objectionable": this applies to Representative O'Connell (R. 1115, 1078), Roger N. Baldwin (R. 1115), and respondents Carney (*id.*) and Macri (*id.*). Representative Bernard is not a "proper man" (R. 1078). The list of hereties could be extended *ad nauseam.* It seems to include the National Rededicationists (R. 1231). It includes also all people who talk about civil rights; they are invariably "Reds" (R. 1146):

"Q. I see. But you don't believe much in these civil rights do you? A. Not coming from an element of that character. Whenever I hear a discus-

sion about civil rights and the rights of free speech and the rights of the Constitution, always remember you will find him with a Russian flag under his coat; you never miss."

And on the other hand we have the list of the faithful—the "high class", "proper", "respectable" (all particularly so if they reside in Jersey City).

The important thing to observe is that all those who are identified as "Reds" or "undesirables" may not speak in Jersey City, and this for no other reason than that they are so identified. This emerges with entire clarity in the following passage anent A. C. L. U. (R. 1267-70):

"Q. Mr. Mayor, do I understand from you that the American Civil Liberties Union is an undesirable organization, to use your words? A. Yes, sir.

"Q. And when you say it is an undesirable organization, do you mean only its directors, or do you mean its members? A. I mean the heads of it. You are one of them.

"Q. The heads of it. Now, does this mean, Mayor, in your judgment, that if the American Civil Liberties Union applies for a permit, they would be so undesirable that no one of its directors would be allowed to speak in Jersey City? A. Not according to the testimony before the Fish Committee of Mr. Baldwin.

"Q. Not according to your own judgment also? A. My own judgment, they would not be entitled.

[Here counsel read a list of members of the National Committee of A. C. L. U. as of December, 1937: Edgar Blake; Richard C. Cabot; John F. Finerty; Lloyd K. Garrison; Francis J. Gorman; Hubert C. Herring; Sidney Howard; Frederic C. Howe; Henry T. Hunt; John A. Lapp; James H. Maurer; Edward L. Parsons; Jeanette Rankin; Clarence R. Skinner; Charney B. Vladeck; A. F. Whitney; L. Hollingsworth Wood; Mary E. Woolley; Richard S. Childs; Dorothy Kenyon; Elmer Rice; William B. Spofford.]

* * * * * * *

"Q. You have heard that list of names, and I now ask you whether, having heard that list of names, consisting of members of the Board of Directors and the Executive Committee, the National Executive Committee, whether you wish to change your testimony as to the fact that those names are unacceptable as speakers in Jersey City, under an application filed by the American Civil Liberties Union? Do you want to change your statement? A. Do I want to change my statement?

"Q. Yes. A. No."

By parity of reasoning the Mayor will not countenance a May Day parade solely because "they have no place there in the beginning" (R. 1148). And so the Mayor's position as to street meetings and parades dovetails with his views as to circular distribution, administration of the placard ordinance, etc.—all of which are, as we have shown above, governed by a rule of "Redness".

We repeat here that despite petitioners' hysterical denunciation of respondents as "Reds", the concurrent findings flatly contradict the charge, so far as so nebulous a charge can be contradicted (*i. e.*, in terms of advocacy of overthrow of organized government and violation of law). By this we do not mean to concede that proof of "Redness" would be relevant to the issues. For there is no warrant under the Constitution for denying human beings the common liberties of man because their views are minority views or are disapproved by a City administration.

6. *The Ordinance Has Been So Applied to and Enforced Against the Respondents as to Violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment.*

The story just told of the application of the ordinance to the respondents plainly shows corrupt, unreasonable, discriminatory, and therefore unconstitutional enforcement of the ordinance, sufficient to support the injunctive

provisions under review irrespective of the basic invalidity of the standard in terms embodied in the ordinance. Such was the concurrent finding below. The ordinance has been applied to deny respondents the right to speak, although no reasonable apprehension of disorder existed, and solely upon the ground (not authorized by the ordinance or the Constitution) that the respondents are deemed "undesirable" by the City authorities.

The criterion of "'desirability" cannot be resorted to in a democracy:

> "The long road that men have had to come from ignorance and superstition, though once beset by the hosts of intolerance and bigotry, is not now so beset, at least in America. Freedom of thought, the right of men to sincerely think and believe what they will, and to honestly disseminate that belief, is guaranteed in the bills of rights and in the spirit of the laws, beyond the power of any government official to prevent its dissemination, because the particular brand of belief, as belief, is objectionable to or not understandable by him."
>
> HUTCHESON, *J.*, in *Rood* v. *Goodman*, 83 F. (2d) 28, 31 (C. C. A. 5th, 1936).

> "The mayor refuses a permit, it is said, because the applicants were Socialists. If that is so, he was guilty of a grave abuse of power."
>
> CARDOZO, *J.*, in *People ex rel. Doyle* v. *Atwell*, 232 N. Y. 96, 103 (1921).

That an ordinance constitutional upon its face may be so *applied* by its administrators as to violate the Fourteenth Amendment, is settled by multitudinous authorities (*Yick Wo* v. *Hopkins*, 118 U. S. 356 [1886]; *Sunday Lake Iron Co.* v. *Township of Wakefield*, 247 U. S. 350, 352 [1918]—MCREYNOLDS, *J.*; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 545 [1934]—VAN DEVANTER, *J.*), and is a doctrine pertinent in the field of free speech as elsewhere (*Sullivan* v. *Shaw*, 6 F. Supp. 112 [D. Calif. 1934]; *People ex rel. Doyle* v. *Atwell*, *supra*).

PART TWO:

OBJECTIONS TO JURISDICTION REFUTED

POINT I

The courts below had jurisdiction over the subject matter of the case.

Representations Made by Petitioners At the Trial

The objections to jurisdiction which are now urged by petitioners will appear to this Court to be no more than the recent fruit of a lively realization that their defenses on the merits are unsubstantial.

In the trial court the petitioners represented that they could in good faith agree that facts basic to jurisdiction were present, sufficient to ground a consent decree on most of the issues in the case.

At the opening of the trial counsel for petitioners reviewed the complaint and the several prayers, and indicated that petitioners would consent to a decree on all issues except that of public meetings, as to which counsel requested a continuance in order to ascertain whether it could not be submitted to the court upon an agreed statement of facts and briefs. Judge CLARK interpreted the offer to mean: "* * * Mr. Hamill conceded the legal validity of five points * * * and agreed to an order covering those five points; * * * he did not concede the legal validity of the 6th point, namely, the question of public meetings" (4 R. 91). When counsel for respondents opposed a continuance on the ground that petitioners were not offering to consent to the factual findings to which respondents were entitled, counsel for petitioners declared that "of course we have to admit that sufficient facts are

true to base an order complying with the prayer" (4 R. 92), and "there will be no difficulty whatsoever in arriving at an agreement upon the facts, sufficient to sustain and justify a proper injunction in this case" upon all of the issues except that of public meetings (4 R. 97). He thereupon renewed his proposal to consent to a decree. A decree was in fact drawn to the satisfaction of counsel on both sides but it was disapproved by petitioners and the trial was resumed.

The least that can be said of petitioners' remarks at the opening is that they conceded that *jurisdictional amount could be stipulated to in good faith.* It might well be held that such a concession had the effect of casting the burden on the petitioners to overcome the respondents' allegation of amount contained in the bill of complaint. See *Wisconsin E. Co.* v. *Dumore Co.*, 35 F. (2d) 555 (C. C. A. 6th), *cert. dism.*, 282 U. S. 813 (1931). That a party may be bound by statements of counsel made at the opening of trial is, of course, too clear for extended argument. See *Oscanyan* v. *Winchester Arms Co.*, 103 U. S. 261 (1880); *Waldron* v. *Waldron*, 156 U. S. 361 (1894); *Turner* v. *Turner*, 16 How. 14 (1853). It is settled law that absence of jurisdictional amount must appear with utmost clarity before jurisdiction will be held not to exist; plainly petitioners are in no happy position to make any such argument in view of their statements at the opening.

The situation is concededly novel, but there appears to be no plausible reason why a representation that jurisdictional amount is present to such an extent that a consent decree would not be a sham attempt to foist jurisdiction upon the court, should not be held to shift the burden of going forward to disprove jurisdictional amount on the party that makes the representation.

In this Court petitioners say that they are earnestly interested in having the substantive questions conclusively decided, but present their jurisdictional objections as a

matter of "duty" (Br., p. 25). This Court may well relieve petitioners of this apparently onerous burden of conscience by giving the effect above indicated to their own representations made at the outset of the trial.

The objections to jurisdiction, however, are in any event without merit and were correctly disposed of by both lower courts. Not only was jurisdiction present under sections of the Judicial Code dispensing with amount in controversy, but respondents fully carried the burden of proof under the section of the Judicial Code requiring a minimal jurisdictional amount—as the lower courts concurrently found.

Rulings Below on Jurisdiction

The District Court, upon appropriate findings of fact, held jurisdiction to have been properly based upon Section 24 (14) of the Judicial Code (civil rights; no minimal jurisdictional amount in controversy required); or, independently, upon Section 24 (1) (Federal question and $3,000.); or, independently, upon Section 24 (12) (conspiracy to deprive citizens of civil rights; no amount required).

The Circuit Court of Appeals unanimously affirmed the holding as to Section 24 (14). It also affirmed the holding as to Section 24 (1), Judge DAVIS dissenting. It found it unnecessary to discuss Section 24 (12) as a cumulative basis of jurisdiction.

A. Jurisdiction existed under Section 24 (1) of the Judicial Code

1. *Both Lower Courts Having Found Minimal Amount as a Fact, This Court Will Not Ordinarily Disturb the Findings.*

Conventional jurisdiction was asserted herein under Section 24 (1) of the Judicial Code (Federal question and

$3,000) (R. 7, 18). That Federal questions are involved is clear. The various features of the case are brought within provisions of the Constitution and the whole of the case is within the substantive scope of 8 U. S. C., Section 43 (considered below).

The only possible doubt that may arise is as to jurisdictional amount—a matter of *fact*.

The facts adduced before the trial court showed a single "deliberate policy" of excluding and removing respondents from the City of Jersey City by force and violence, preventing the dissemination of literature by them, gagging them, etc.—all with the intent and purpose of preventing the respondents from pursuing their normal objectives and regular callings (Findings A-1, 2, B-1, 2)—an intent and purpose which were successfully consummated, resulting in the total suppression of the respondents. Petitioners' acts, though complained of under the Constitution and laws of the United States, were obviously tortious in character. The specifically economic aspects of the controversy are also evident.

After a trial lasting many days, in which a four volume record was compiled showing the nature and extent of the deprivations involved as well as their effect upon the respondents, the trial court found as a *fact* that the required jurisdictional amount was present (Findings F-1, 2).

The Circuit Court of Appeals, after an unusually searching and careful inquiry into the record facts, confirmed these findings of the trial court, saying in its opinion (4 R. 125-6):

> "* * * This was in effect a finding by the court that each of the [respondents] might have recovered such a sum in damages for each deprivation of a right. It was also the equivalent of a finding that the amount claimed by the [respondents] to be in controversy was averred by them in good faith.
>
> "*In our opinion the court below would not have been justified in holding otherwise.* Wiley *v.* Sinkler,

> *supra* [179 U. S. 58]. Its finding is precisely similar to that of a jury in an action for damages brought to redress the deprivation of civil rights and was not required to be based on specific evidence as to the value but rather on the trial judge's own knowledge and opinion as to the value and as to the exemplary or punitive damages which might be reasonably awarded. Wayne *v.* Venable, 260 F. 64."

There is thus presented in the case the concurrence of both the trial and the appellate courts on a jurisdictional fact, upon a full consideration of the evidence upon the weight of which, both courts, as equity tribunals, were authorized to pass. It is a fundamental rule of this Court that a finding of fact thus doubly assured will not be disturbed in the absence of clear showing of error. *Shappirio* v. *Goldberg,* 192 U. S. 232, 240 (1904); cases, *supra,* pp. 2-3. This Court has been loath to disturb factual findings on jurisdictional amount. In *Zeigler* v. *Hopkins,* 117 U. S. 683, 689 (1886), this Court said:

> "We are entirely satisfied that the suit was instituted in good faith by real parties for the determination of a substantial right, and that it fairly presents the questions involved. The Court below found as a fact that the value of the premises in dispute exceeds $6,000, and this appears on the face of the record. While the affidavits as to value presented by Rosenbaum, taken by themselves, show that possibly the property may be worth less than $5,000, *they are not enough to overcome the finding of the court below that it was actually worth more than that sum.*"

To the same effect are:

> *Gage* v. *Pumpelly,* 108 U. S. 164 (1883);
> *Risty* v. *Chicago, R. I. & P. R. R. Co.,* 270 U. S. 378, 389 (1926).

Not only is the "two-court" rule applicable, but it operates here in a field where, in any event, absence of jurisdictional amount must appear with the utmost clarity before it may be held not to exist.

It is unnecessary to a determination of this case to decide whether the rights here involved are, in the abstract, of the value of $3,000 or more. Enough for purposes of this case that two courts have found, under the *particular* circumstances of *this* controversy, that the rights have the requisite value.

It is respectfully submitted that the concurrent findings should not be disturbed.

Although the concurrent findings might be relied on without more, we shall address ourselves to a fuller consideration of the principles underlying them.

2. *The Evidence Below Supports the Lower Courts' Findings*

As has been said, the series of interferences by force, violence and conspiracy with the rights of the respondents involving freedom of speech, of press and assembly, freedom from unlawful arrest and freedom to pass unmolested along the public streets and at will into and out of the City or State, as well as freedom to carry on legitimate occupations and to work for a living, constituted tortious acts, both joint and several, for which actions at law might have been prosecuted and vindictive damages recovered (see cases cited at 4 R. 125); and acts which, because of their continuous character, became the subject of equitable cognizance.

What proof then of pecuniary value is required in such actions, sounding in tort, when relief has been sought in equity for injunction rather than at law for compensation? Surely as to torts already committed, the value of the matter in controversy must be the same, whichever court

be invoked. And that value when unliquidated must be in the one instance appraised by the jury, in the other by the judge. The findings of fact by a jury surely have no more dignity than those by a judge and we have already noted that the Circuit Court of Appeals affirmed the trial judge's finding of jurisdictional amount.

If the rulings below on this subject are to be reviewed even without benefit of the "two-court" rule, the criterion to be applied must be that enunciated by this Court in a series of cases, of which *Put-In-Bay Waterworks, L. & R. Co.* v. *Ryan*, 181 U. S. 409 (1901), is typical. This Court said (pp. 430-1):

> "And it has been several times decided by this court that a suit cannot properly be dismissed by a circuit court as not involving a controversy of an amount sufficient to come within its jurisdiction, *unless the facts, when made to appear on the record, create a legal certainty of that conclusion.* *Barry* v. *Edmunds*, 116 U. S. 550; *Wetmore* v. *Rymer*, 169 U. S. 115."

The various tests of value applicable to the facts of this case will be briefly considered.

a. *The value of the rights sought to be vindicated is the general criterion.*—This Court has in numerous cases held that the averment of jurisdictional amount, when the value of the rights sought to be protected is not liquidated, will sustain jurisdiction unless obviously colorable or made in bad faith. Thus in *Smithers* v. *Smith*, 204 U. S. 632, 642 (1907), Mr. Justice Moody stated the governing rule as follows:

> "Ordinarily the plaintiff's claim with respect to the value of the property taken from him or the amount of damages incurred by him through the defendants' wrongful act measures, for jurisdictional purposes, the value of the matter in controversy [citing cases], unless, upon inspection of the

> plaintiff's declaration, it appears that, as a matter of law, it is not possible for the plaintiff to recover the jurisdictional amount [citing cases]."

In his opinion in the Circuit Court of Appeals, Judge Biggs held that the factual findings of the trial court on jurisdiction sustained the good faith of respondents in alleging amount in controversy (4 R. 125-6).

Moreover, it is settled that in cases in equity seeking injunctive relief the value of the matter in dispute is that of the object of the bill.

One of the leading decisions of this Court illuminating this principle is *Glenwood Light & Water Co.* v. *Mutual Light, Heat & Power Co.*, 239 U. S. 121 (1915). The bill sought to enjoin a rival electric company from interfering with plaintiff's business. The District Court dismissed the bill after testing jurisdiction by the cost of removing the poles and wires which caused the interference. Mr. Justice Pitney, speaking for this Court, which reversed the action of the lower court, said (pp. 125-6):

> "We are unable to discern any sufficient ground for taking this case out of the rule applicable generally to suits for injunction to restrain a nuisance, a continuing trespass, or the like, viz., that the jurisdictional amount is to be tested by the value of the object to be gained by complainant. The object of the present suit is not only the abatement of the nuisance, but (under the prayer for general relief) the prevention of any recurrence of the like nuisance in the future. In *Mississippi & M. R. Co.* v. *Ward*, 2 Black, 485, 492, it was said: 'The want of a sufficient amount of damages having been sustained to give the Federal courts jurisdiction will not defeat the remedy, as the removal of the obstruction is the matter of controversy, and the value of the object must govern.' The same rule has been applied in numerous cases, and under varying circumstances. *Scott* v. *Donald*, 165 U. S. 107, 115; *McNeill* v. *Southern R. Co.*, 202 U. S. 543, 558; *Hunt* v. *New York Cotton Exc.*, 205 U. S. 322, 336;

Bitterman v. *Louisville & N. R. R. Co.*, 207 U. S. 205, 225; *Berryman* v. *Whitman College*, 222 U. S. 334, 345."

The "value of the right" principle received an interesting application in *Evenson* v. *Spaulding*, 150 Fed. 517 (C. C. A. 9th, 1907), which involved a suit to enjoin a wrongful combination by defendants to interfere with the complainant's business as a vendor of buggies, in the course of which defendants followed complainant's agents and harassed them by interrupting conversations with customers and intimidating the agents in ways bearing a marked similarity to some of the methods of petitioners in this case. Viewing the realties of the present day, it should make no difference that C. I. O. is a labor union pursuing the objective of organizing the unorganized, whereas the plaintiff in the *Evenson* case was a vendor of buggies. In each case economic activities were the subject of interference and the value of the right to be free of such interference is determinative as to the amount involved. In this connection also weight should be given to the line of cases represented by *Rocky Mountain Bell Tel. Co.* v. *Montana Federation of Labor*, 156 Fed. 809 (D. Mont. 1907), and *Tri-City Central Trades Council* v. *American Steel Foundries*, 238 Fed. 728 (C. C. A. 7th, 1917), *mod.*, 257 U. S. 184 (1918), in which labor unions were enjoined from injuring the business of plaintiffs, jurisdiction being sustained on the test of the value of the rights of the plaintiffs to conduct their enterprises.

b. *Value of civil rights.*—While the value of social or political rights is not capable of exact admeasurement, this Court has repeatedly adjudged that presumptively they have a value in excess of the jurisdictional amount. It would indeed be a travesty if rights so fundamental, and for that reason inestimable, were held to be worthless; and this Court has ruled to the contrary.

In *Wiley* v. *Sinkler*, 179 U. S. 58 (1900), suit was brought to recover damages for wilful denial by an election board of the plaintiff's right to vote in a Federal election. It was held that the cause of action arose under the Constitution or laws of the United States. On the question whether the jurisdictional amount (then $2,500) was made out, the Court said (p. 65):

> "The damages are laid at the sum of $2,500. What amount of damages the plaintiff shall recover in such an action is peculiarly appropriate for the determination of a jury, and no opinion of the court upon that subject can justify it in holding that the amount in controversy was insufficient to support the jurisdiction of the Circuit Court. *Barry* v. *Edmunds*, 116 U. S. 550; *Scott* v. *Donald*, 165 U. S. 58, 89; *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 468, 472; *North American Transp. & Trading Co.* v. *Morrison*, 178 U. S. 262, 267."

In *Swafford* v. *Templeton*, 185 U. S. 487 (1902), the *Wiley* case was cited with approval and followed. Again in *Giles* v. *Harris*, 189 U. S. 475 (1903), Mr. Justice Holmes, for a majority of the Court, approved the doctrine of the *Wiley* and *Swafford* cases and applied it to a bill in equity.

In a more recent case, *Nixon* v. *Herndon*, 273 U. S. 536 (1927), Mr. Justice Holmes summarized the law in characteristic fashion (p. 540):

> "The objection that the subject-matter of the suit is political is little more than a play upon words. Of course, the petition concerns political action, but it alleges and seeks to recover for private damage. That private damage may be caused by such political action, and may be recovered for in a suit at law, hardly has been doubted for over two hundred years, since *Ashby* v. *White*, 2 Ld. Raym. 938, 92 Eng. Reprint, 126, 1 Eng. Rul. Cas. 521, 3 Ld. Raym. 320, 92 Eng. Reprint, 710, and has been recognized by this Court. *Wiley* v. *Sinkler*, 179 U. S. 58, 64, 65; *Giles* v. *Harris*, 189 U. S. 475, 485.

See also Judicial Code, Sec. 24 (11), (12), (14). Act of March 3, 1911, Chap. 231, 36 Stat. at L. 1087, 1092, Comp. Stat. Sec. 991, 4 Fed. Stat. Anno. 2d ed., p. 840."

See also:

McNichols v. *Internat'l Typ. Union*, 21 F. (2d) 497, 498 (C. C. A. 7th, 1927).

As was said in *Wayne* v. *Venable*, 260 Fed. 64, 66 (C. C. A. 8th, 1919):

> "In the eyes of the law this right [to vote for a member of Congress] is so valuable that damages are presumed from the wrongful deprivation of it without evidence of actual loss of money, property, or any other valuable thing, and the amount of the damages is a question peculiarly appropriate for the determination of the jury. * * *"

Manifestly the reasoning of the cited cases applies with increased vigor where the rights sought to be protected by injunction are not only political but civil and economic. If interference with the right to vote has a value in excess of the jurisdictional minimum, certainly the rights of free speech, free press, lawful assembly, freedom of locomotion and freedom to do lawful work have a value which a trial court may properly find to be in excess of the jurisdictional minimum.

Moreover, the economic phases of these rights in so far as respondents are concerned are patent; petitioners have sedulously avoided reference to, or consideration of, such rights as instrumentalities of an economic undertaking. Respondents C. I. O. and affiliated unions pursue as their calling or business labor organizational work which is dependent upon exercise of civil liberties. Respondent A. C. L. U. is organized to defend against violation of civil liberties and to encourage the exercise of those liberties, and it solicits and receives funds for this purpose.

The individual respondents are the regional director and field representatives of the C. I. O., who in the performance of their work must rely upon the civil liberties heretofore described. These facts offer an additional basis upon which jurisdictional amount may be predicated in relation to the civil rights infringed by petitioners.

Referring to *Wiley* v. *Sinkler, supra,* and *Nixon* v. *Herndon, supra,* petitioners state in their brief (p. 80):

> "So far as presumptive jurisdictional amount is concerned, those cases are in the same category as common law actions for negligence, false imprisonment and the like. * * *"

But so are the overt acts alleged in the complaint and found by the lower courts, the tortious nature of which has been mentioned. In view of the findings that conspiracy, force and violence were resorted to by petitioners to prevent the enjoyment by respondents of their civil rights, the attempted distinction of the cited cases is wholly ineffectual.

But it is not even important to determine whether the acts here involved were tortious. A cause of action is furnished by the Constitution and laws of the United States—whether sounding in tort or not. The sole question is whether the rights have value, and if it was held in the cases cited that the right to vote has value, it must by parallel reasoning be held that the civil rights at bar have value.

c. *"Property rights."*—Under Point III (b) of their brief petitioners assert that to satisfy minimum amount the subject matter of a suit must be something in the nature of a property right capable of financial appraisal, excluding speculative damages which might result from the wrong complained of. Essentially the issue on this phase of the argument is whether the rights here infringed are less capable of financial appraisal than the right to vote under the line of cases beginning with *Wiley* v. *Sinkler,* above considered.

Such cases as *Barry* v. *Mercein*, 5 How. 103, and *Kurtz* v. *Moffitt*, 115 U. S. 487, cited by petitioners, have no relevancy. In *Barry* v. *Mercein* an effort to obtain from a Federal court on the ground of diversity of citizenship a writ of habeas corpus to determine the rival claims of separated parents to the custody of a child, was properly held to involve no property right as the right to the custody of a child was incapable of being reduced to a pecuniary standard of value. In *Kurtz* v. *Moffitt* this Court reviewed with care all of the enactments bearing upon the writ of habeas corpus and concluded that an examination into the legality of the process under which state authorities purported to hold a person in custody involved a legal question incapable of financial appraisal. Therefore this Court sustained the refusal of the lower court to remove the proceedings to the Federal courts, but considered the case upon its merits by writ of error sued out by the prisoner and on this writ of error reversed the State court in its remand of the prisoner to custody. In neither instance was there any case capable of sounding in damages. The action was not one of false arrest or imprisonment as ordinarily understood, but one inquiring into the power, under the law, of the custodian to retain the custody.

As to the other cases cited by petitioners such as *Healy* v. *Ratta*, 292 U. S. 263, and *Youngstown Bank* v. *Hughes*, 106 U. S. 523, the statements in their brief of the basis of decision amply furnishes the grounds of distinction. Petitioners, however, seek to assimilate these cases to the instant one by gratuitously assuming that jurisdiction is predicated upon speculative damages which respondents might suffer if prevented in the future from carrying on certain activities, quite overlooking the fact that the injury is not merely threatened but involves as well tortious action in the past which already had inflicted substantial damage, carried out as it was by a combination of C[illegible] officials which both lower courts found

to exist and to threaten the perpetration of similar acts in the future.

Petitioners wholly ignore the fact that the rights of which respondents were deprived were by them attempted to be exercised in pursuance of a Federally declared policy incorporated in the National Labor Relations Act (29 U. S. C., Sections 151-166).

Plainly, workers cannot be organized unless they can be approached, and the testimony in this case from start to finish indicates that the City authorities have, by application of unconstitutional ordinances and regulations, by discriminatory enforcement of ordinances and regulations, and by action *per se* unconstitutional, so limited the right of C. I. O. to communicate with workers as to make organization impossible, and by the same token to render the Labor Act a nullity in Jersey City. The point was best summarized by the witness Macri when he said (R. 961):

> "It has hampered a whole lot the organization drive of organizing the unorganized workers in Jersey City."

The Labor Act was passed to insure that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection" (Section 157). Mayor Hague conceded that many industries located in Jersey City deal in interstate commerce (Exh. P-37; R. 1221-22); and the efforts of C. I. O. to organize workers in the City is, as the evidence indicates, bottomed upon the Act. It is difficult to see how frustration of the very objective of the Act can be said not to result in pecuniary damage.

Petitioners urge that rights such as freedom of speech and public assembly are not calculable in terms of money.

But when these rights, together with others here involved, condition the performance of one's normal work or calling it follows that their denial results in destruction of the opportunity to work or pursue one's calling. That the civil rights of which the individual respondents were deprived, so that they were unable to work in Jersey City, have an economic aspect is settled by the decision of this Court in *Truax* v. *Raich*, 239 U. S. 33 (1915). In upholding injunctive relief against threatened interference by State authorities with employment at will, Mr. Justice HUGHES said (p. 41):

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. *Butchers Union Co.* v. *Crescent City Co.*, 111 U. S. 746, 762; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Allegeyer* v. *Louisiana*, 165 U. S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U. S. 1, 14."

That respondents C. I. O. and its affiliated unions and A. C. L. U. as a membership corporation were also deprived of rights of a pecuniary nature is evident from the Court's decision in *International News Service* v. *Associated Press*, 248 U. S. 215, 236 (1918). There Federal jurisdiction was invoked on an allegation of diversity of citizenship and damage in excess of $3,000. The Court, in an opinion by Mr. Justice PITNEY, extended the principle of the *Truax* case to all civil rights used to further economic interests:

> "In order to sustain the jurisdiction of equity over the controversy, we need not affirm any general and absolute property in the news as such. The rule that a court of equity concerns itself only in the protection of property rights *treats any civil right of a pecuniary nature as a property right*

(*Re Sawyer*, 124 U. S. 200, 210; *Re Debs*, 158 U. S. 564, 593); *and the right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired* (*Truax* v. *Raich*, 239 U. S. 33, 37-38; *Brennan* v. *United Hatters*, 73 N. J. L. 729, 742; *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101.)"

d. *Value in cases of repeated trespass and other torts.*—The record is replete with evidence of assaults, molestations, false imprisonment and false arrests of respondents in pursuance of the deliberate and malicious policy applied against them by petitioners. The findings speak of "exclusion, removal, personal restraint and interference • • • carried out by force and violence" and on "administrative fiat" (C-8). Pertinent to jurisdiction is the following factual finding (F-2):

> "The enforcement of the defendants' policies above set forth, as against the plaintiffs herein, results in irreparable damage to them and the threat of continued enforcement of said policies against them involves a threat of manifold and repeated prosecutions for alleged offenses and manifold and repeated invasions of their rights."

Had respondents brought actions for damages on the law side of the District Court, each could in good faith have alleged compensatory and exemplary damages in excess of $3,000 and jurisdiction would have definitely attached. *Barry* v. *Edmunds*, 116 U. S. 550 (1886); *Ragsdale* v. *Rudick*, 293 Fed. 182 (C. C. A. 5th, 1923).

A striking application of this principle is contained in *Hynes* v. *Briggs*, 41 Fed. 468 (D. Ark. 1890). The plaintiff charged false imprisonment through deprivation of his liberty for fifteen minutes by defendants, a sheriff and a justice of the peace, for refusal to pay a license fee demanded of him under a State statute prescribing fees for persons engaged in designated occupations. Damages

of $10,000 were claimed. Defendants challenged the jurisdiction of the court on the ground that the amount is controversy did not exceed the jurisdictional minimum as appeared by the agreed statement of facts and that plaintiff must have known his damages were less when he instituted his suit. The court overruled these objections, stating (p. 471):

> "The rule of action, and the possible results, in this class of cases was well expressed by Lord Temple in a speech in the house of lords, when he said:
>
> " 'That noble and learned lord (Camden) has said, I believe, on other occasions, and he has said well, the price of one hour's English liberty none but an English jury could estimate, and juries, under his guidance, have put a very high value upon it, in the case of the meanest of our fellow-subjects, when oppressed by the servants of the state.' 6 Camb. Lives Ld. Ch. 384.
>
> "No court would be justified in saying that an American jury could not rightfully award more than $2,000 damages to a citizen who had been illegally deprived of his liberty, for fifteen minutes, by a public officer acting without the sanction of any law."

It is immaterial that respondents joined in a suit to restrain the repeated and continuous trespasses and other tortious acts rather than filed actions for damages. They sought to vindicate their right to be free from unlawful interferences, and the value of that right is determinative of amount in controversy under the authorities cited in subdivision a, *supra*. Past acts and future or threatened probabilities enter into such calculation. *Fidler* v. *Roberts*, 41 F. (2d) 305 (C. C. A. 7th, 1930).

e. *The rule of aggregation to establish the minimum jurisdictional amount is also applicable.*—The C. I. O. and the individual respondents as its organizers have essen-

tially a joint and common interest, for the defeat of which the reprehended actions of the petitioners were undertaken. The respondents were not maltreated on separate and distinct grounds, but were the victims of a common policy which made a man's affiliation with the C. I. O. sufficient ground for his designation as an "undesirable" and therefore as one who had no civil rights in Jersey City. The petitioners say (Br., p. 79):

> "The most that can be said is that if the respondents are permitted to exercise the activities purportedly secured to them by the decree of the Court below, they may, perhaps, consequently have greater success in organizing particular types of labor unions in Jersey City; that if they are successful in that regard, they may realize increased revenues in the form of dues and other perquisites, and that such revenues may ultimately amount to sums exceeding the jurisdictional amount required by Section 24 (1)."

This statement concedes some pertinent elements, but ignores many others which we have touched upon,—*i. e.*, the value generally of the rights sought to be vindicated as the basic elements upon which rest the work of labor unions and their organizers and interference with which would, if sustained, be tantamount to obliteration of labor unions; the value of civil rights of the individual respondents as citizens; the property rights of the plaintiffs; and the torts committed by respondents prior to the filing of the complaint, continuance of which was threatened.

These values and claims may all be aggregated in determining jurisdictional amount under the principle of *Troy Bank* v. *Whitehead*, 222 U. S. 39 (1911), in which the Court said:

> "When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional

> amount; but when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount." [Citing cases.]

Moreover, this may be regarded as a representative suit in behalf of all C. I. O. unions and members so that the aggregate interests of the whole class constitute the matters in dispute. *International News Service* v. *Associated Press, supra; Local No. 7 B. M. P. I. U.* v. *Bowen,* 278 Fed. 271 (S. D. Tex. 1922); *Local Union A. A. S. E. R. E.* v. *Joplin & P. R. Co.,* 287 Fed. 473 (C. C. A. 8th, 1923).

The charges of conspiracy also permitted aggregation of plaintiffs' claims. In Part One of this brief the evidence in proof of conspiracy by petitioners against respondents is set out. It should be noted that the policy applied was not a new one evolved in November, 1937. It was a well conceived and carefully executed policy dating back to the year 1936, for the restraint of which recourse had already been had to the District Court in the case of *Casey* v. *American Civil Liberties Union and Boot and Shoe Workers' Union,* in which similar activities on the part of some of the petitioners herein against one of the respondents herein were preliminarily restrained. An appeal from the injunctive order was submitted to the Third Circuit Court of Appeals at the October Term, 1937, and was dismissed in December, 1938, since the situation therein complained of was held by a majority of the court to have become moot, Judge Biggs dissenting in a separate opinion (100 F. [2d] 354).

Indeed the definiteness of the policy adverted to is such as fully to justify the findings of unlawful combination; and a combination of such a character, uninterruptedly continued, appears sufficient to bring the case under the doctrine of *McDaniel* v. *Traylor,* 196 U. S. 415 (1905). In that case a decedent's estate was permitted

to aggregate the "amount of the claims fraudulently procured by the defendants, acting in combination, to be allowed in the Probate Court as claims against the estate." The Court stated its conclusion as follows (p. 297):

> "By reason of that combination, resulting in the allowance of all those claims in the probate court, as expenses of administering the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, *one* claim. The validity of all the claims depend upon the same facts."

The theory here suggested was more fully developed in *Sovereign Camp, etc.* v. *O'Neill,* 266 U. S. 292 (1924), where this Court reviewed its earlier decisions. The conspiracy in that case involved a combination on the part of twenty-five members of the plaintiff fraternal society to mulct the society by prosecuting baseless claims for travelling and other expenses as alleged delegates of the society. The bill was dismissed below for lack of jurisdictional amount existing in favor of the society as against any one member. This Court reversed, saying (p. 297):

> "A conspiracy to prosecute, by concert of action, numerous baseless claims against the same person for the wrongful purpose of harassing and ruining him, partakes of the nature of a fraudulent conspiracy; and in a suit to enjoin them from being separately prosecuted, it must likewise be deemed to tie together such several claims as one claim for jurisdictional purposes, making their aggregate amount the value of the matter in controversy."

It is respectfully submitted that on these authorities the aggregation of all of the claims of respondents as hereinbefore analyzed was permissible, particularly in view of the express holding of the trial court that the action of petitioners covered in the several subdivisions of the findings was in pursuance of a deliberate policy and the rul-

ing in the conclusions of law that respondents have established and proved a cause of action, among others, under conspiracy sections of the United States Code (Title 8, Section 47 (3), reinforced by Title 18, Section 51), considered *infra* as affording independent grounds of Federal jurisdiction.

By way of conclusion of our argument under Section 24 (1), it should be observed that admittedly this is a case arising under the Constitution and laws of the United States, so that this Court is the ultimate arbiter of the matters involved. Basically, therefore, the question is whether under the facts established, this case should have come to this Court through the lower Federal courts or through the State courts. *Jurisdictional amount has varied from time to time and is merely an index of importance fixed by Congress to relieve the lower Federal courts of comparatively unimportant cases which could safely be left to State tribunals. Both the trial court and the Circuit Court of Appeals have determined that the rights here involved are so valuable that the controversy satisfies the present index of importance as fixed by Congress. It was not the legislative intent to have this index applied by a bookkeeping technique.*

B. Jurisdiction existed under Section 24 (14) of the Judicial Code (civil rights).

1. *Scope of Judicial Code, Section 24 (14), and the Cognate 8 U. S. C., Section 43.*

Subdivision 14 of Section 24 of the Judicial Code provides for original jurisdiction in the District Courts without any requirement of amount in controversy, in the cases of great intrinsic importance described in the subdivision as follows:

> "*Suits to redress deprivation of civil rights.* Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

This subdivision was enacted in conjunction with, and implements the substantive provision now appearing in 8 U. S. C., Section 43, which reads as follows:

> "*Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Both sections just quoted are derived from "*An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes,*" commonly known as the Civil Rights Act (approved April 20, 1871).* It plainly appears from the title

*17 Stat. 13 (1871). The first section of this act provided: "That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled 'An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication,' and the other remedial laws of the United States which are in their nature applicable in such cases."

The original Civil Rights Act of 1866 (14 Stat. 27), enacted under authority of the second clause of the Thirteenth Amendment, was called "An act to pro-

of the constitutive act, which states its purpose to be the *enforcement* of the Fourteenth Amendment; from the historical setting of the act, which indicates that the intention was to make altogether effective the strictures of the Fourteenth Amendment against invasion of civil rights by the States; from the titles of the particular sections here in question, which repeat the word "civil"; and from their texts, which closely parallel the language of Section 1 of the Fourteenth Amendment, that the animating design was to open the Federal courts to the enforcement of rights distinctively civil in character that fall within the scope of the Amendment. The Congress had reason to fear that it would not be enough to adopt the Amendment without enforcing it by appropriate substantive legislation; and that even such legislation would be ineffectual if suits thereunder were to be brought in the courts of the very States which had violated it, even though ultimate review could be had in this Court. For this reason the Congress explicitly conferred original Federal jurisdiction, and without any requirement of amount in controversy.

Thus a National pattern was sought to be imposed as to the fundamental civil rights; and they read the times wrongly who think that the imposition of such a pattern is not as necessary today as in the years following the Civil War.

---

tect all persons in the United States in their civil rights and furnish the means of their vindication," having for its object the conferring of citizenship upon the negroes and securing to them the same fundamental rights as were enjoyed by white citizens. The constitutionality of that act was in doubt, and as a hostile Congress might still take away the rights declared by the act by repealing it, the Fourteenth Amendment, adopted in 1868 in order to obviate all constitutional objections, in its first section declared all persons born or naturalized in the United States to be citizens of the United States, as well as of the States in which they reside. The 1866 act was not deemed sufficient to provide measures of enforcement of the Fourteenth Amendment, see *Live-stock, etc., Ass'n* v. *Crescent City etc. Co.*, 1 Abb. (U. S.) 388 (1870), and the Congress, pursuant to the fifth section of the Fourteenth Amendment, approved the 1871 act. The substantive provision of this act was carried forward into the revision of 1878 as Section 1979 and reenacted in its present form in 1926, 8 U. S. C., §43. Similarly, the jurisdictional provision of the act was embodied in Section 24 (14) of the Judicial Code, 28 U. S. C., §41 (14), and is the result of a revision, by 36 Stat. 1092 (1911), of the jurisdiction which had been vested in the District Courts by paragraph 12 of the Revised Statutes of 1878, Section 563, and in the Circuit Court by paragraph 16 of the Revised Statutes, Section 629.

Petitioners urge a view of the statutory provisions which would in effect render them dead letters. At the same time they seek to attribute to the respondents a view of the provisions unduly broad and expansive. On account of petitioners' sedulous effort to obscure the true nature of respondents' position, we here set forth in summary form the interpretation of subdivision (14) and the cognate Section 43 for which we contend. In our view the proper construction of those statutory provisions is simply as follows:

Confining our view to the Fourteenth Amendment, we say that subdivision (14) and Section 43 create a cause of action in equity or at law, and provide a Federal forum for its enforcement, in cases where rights *distinctively civil* in character, embraced and protected by the Amendment, are claimed to have been infringed by action of officers or persons acting under State authority or under color of State authority. Under such construction the statutory provisions effectuate their historical purpose without unduly burdening or enlarging the original Federal jurisdiction.

Rights distinctively civil in character are secured by each of the three principal clauses of the first section of the Fourteenth Amendment, and subdivision (14) and Section 43 cover the civil rights so secured. Thus: (a) Civil rights secured by the "privileges or immunities" clause. (It should be noted that both subdivision (14) and Section 43 use the words "privilege" and "immunity.") (b) Civil rights secured by the due process clause. (Both subdivision (14) and Section 43 use the generic word "right" *in addition to* "privilege" and "immunity." And both speak of "person"—plainly indicating an intention to go beyond the "privileges or immunities" clause since the latter treats only of citizens of the United States.) (c) Civil rights secured by the equal protection clause. (Same comment.)

The case at bar plainly falls within the pertinent sections.

The rights asserted in the bill of complaint and vindicated by the decree under review are distinctively civil in character and are secured by Section 1 of the Fourteenth Amendment against infringement through State action. Each of the civil rights vindicated by the decree is secured by one or more of the three principal clauses of Section 1 of the Amendment. Thus the right of free passage through the United States is secured by the "privileges or immunities" clause and the due process clause;* the right to be free of physical restraint without arrest according to law, etc., is secured by the due process clause; the right to be free of unreasonable search and seizure is secured by the due process clause † (and perhaps also by the "privileges or immunities" clause, see 4 R. 108-9, 121-4); the rights of free speech, free press and peaceable assembly are secured by the due process clause (and perhaps also by the "privileges or immunities" clause, see 4 R. 121-4). To the extent that discrimination was shown—and discrimination pervades the case and the findings—the equal protection clause is also involved. The case is therefore one which falls patly within subdivision (14) and Section 43. Indeed, taking the case as an integrated whole, no clearer instance for the application of a civil rights act could well be imagined.

The Circuit Court of Appeals succinctly summarized the situation here at bar when it said:

> "It is clear therefore that they [subdivision (14) and Section 43] refer to the civil rights secured by the Fourteenth Amendment, including those fundamental rights which are involved in this suit" (4 R. 123).

---

* Also by the interstate commerce clause.

† Both lower courts held, and we have contended above, that this right is protected by the due process clause. Even if the right is not so protected, however, it is integrated with all the other rights vindicated in this case, which are so protected, and jurisdiction over it would be sustained as over an ancillary "local" ground.

A word should be added at this point concerning the civil rights which are today secured against State invasion by the due process clause of the Fourteenth Amendment (and possibly also by the "privileges or immunities" clause). Petitioners have wrung confusion upon confusion by citing and quoting from cases in this Court and elsewhere dating prior to 1925, reflecting the then current view that the fundamental civil liberties such as free speech, free press and peaceable assembly were not protected in any sense by the Fourteenth Amendment. Such was the law prior to 1925.* See, *e. g., Ex parte Spies,* 123 U. S. 131 (1887); *Maxwell* v. *Dow,* 176 U. S. 581 (1900). Since *Gitlow* v. *New York,* 268 U. S. 652 (1925), and *Fiske* v. *Kansas,* 274 U. S. 380 (1927), however, it is no longer open to question that these civil rights are as much within the ambit of the due process clause as vested rights of property, which were likewise brought within this clause only as the result of a lengthy and tortuous development. See *Allgeyer* v. *Louisiana,* 165 U. S. 578 (1897).

The view that the fundamental civil rights secured by the first section of the Fourteenth Amendment, whether specifically attributable to the "privileges or immunities" clause, the due process clause, or the equal protection clause, are substantively enforceable by Section 43 and jurisdictionally covered by subdivision (14)—the view adopted by all judges below—is amply supported by the cases. Indeed some of the cases might be said to establish that the statutory provisions extend also to property rights mixed or connected with civil rights provided only that the rights in combination are secured by Section 1 of the Fourteenth Amendment. What is entirely clear, however, is that the statutory provisions do extend to civil rights such as those involved in this case. *Raich* v. *Truax.*

* Except that the right peaceably to assemble and petition *any National authority* for a redress of grievances appears from an early date to have been recognized as a privilege protected against State invasion by the "privileges or immunities" clause of the Fourteenth Amendment. See *infra,* p. 135.

219 Fed. 273, *aff'd sub nom. Truax* v. *Raich*, 239 U. S. 33 (1915) (HUGHES, *J.*); *Giles* v. *Harris*, 189 U. S. 475 (1903) (HOLMES, *J.*); *Nixon* v. *Herndon*, 273 U. S. 536 (1927) (HOLMES, *J.*); *Holt* v. *Indiana Mfg. Co.*, 176 U. S. 68 (1900); *Crane* v. *Johnson*, 233 Fed. 334, *aff'd*, 242 U. S. 339 (1917); *Dugan* v. *Bridges*, 16 F. Supp. 694, *app. dism.*, 300 U. S. 684 (1936); *Anderson* v. *Myers*, 182 Fed. 223, *aff'd*, 238 U. S. 368 (1915); *Schlosser* v. *Welsh*, 5 F. Supp. 993 (D. S. Dak. 1934); *Davenport* v. *Cloverport*, 72 F. 689 (D. Ky. 1896); *Lawless* v. *Duval County*, 6 F. Supp. 303 (D. Fla. 1934); *Simpson* v. *Geary*, 204 Fed. 507, 511-12 (D. Ariz. 1913); *Paramino Lumber Co.* v. *Marshall*, 18 F. Supp. 645, *aff'd*, 95 F. (2d) 203 (C. C. A. 9th), *cert. den.*, 83 L. Ed. 12 (1938); *Farson* v. *City of Chicago*, 138 Fed. 184 (D. Ill. 1905); *Broom* v. *Wood*, 1 F. Supp. 134, 136, *rev'd on other grounds*, 287 U. S. 1 (1932); *Salander* v. *City of Tacoma*, 208 Fed. 427 (D. Wash. 1913).

2. *Petitioners' erroneous contention that the provisions of the Civil Rights Act cover only such rights protected by the Fourteenth Amendment as originated in or were "created" by provisions of the Constitution other than the Fourteenth Amendment itself—thus erroneously confining the provisions of the Civil Rights Act to so-called rights of National citizenship and unwarrantably reading the word "secured" in the Civil Rights Act as meaning "created".*

As set forth above, respondents take the position that the provisions of the Civil Rights Act—subdivision (14) and Section 43—in speaking of rights "secured", include the basic civil rights which are protected by the Fourteenth Amendment against State invasion, thus according with the ordinary, common-sense meaning of the word "secured".

In the face of the plain language of the statutory provisions and the even plainer logic of Judge BIGGS' opinion

below, supported by the authorities just cited, petitioners urge a view of those provisions which would effectively nullify them by reading a peculiar gloss over the word "secured", as follows: Petitioners say there are two kinds of rights which the Fourteenth Amendment protects: (1) the rights which originated or were created by provisions of the Constitution other than the Fourteenth Amendment itself, and which were guaranteed against State invasion by the Fourteenth Amendment (these rights turn out to be the so-called rights of National citizenship falling within the "privileges or immunities" clause); (2) fundamental or inherent rights not originating in or created by any provisions of the Constitution, which are none the less guaranteed against State invasion by the Fourteenth Amendment (these turn out to be the basic rights falling within the due process and equal protection clauses). The first category of rights, say petitioners, is within the provisions of the Civil Rights Act as rights "secured" by the Constitution; the second category is not. The first category of rights, it appears upon examination, comprises virtually no significant right except that of free passage through the United States; this right petitioners may—it does not appear clearly from their brief—grudgingly concede to fall within the civil rights provisions. The second category of rights comprises the fundamental civil rights and these are conveniently excluded by petitioners from the civil rights provisions.

It is to be noted that petitioners are compelled to concede that both the categories of rights which they choose to set up are guaranteed against State invasion by the Constitution of the United States, *i. e.*, the Fourteenth Amendment. The only alleged difference between them is that one category is said to have originated in or been "created" by some part of the Constitution other than the Fourteenth Amendment itself, while the second category is said not to have so originated or been so created but to be fundamental or inherent. The statutory word

in question is "secured". Just why rights admittedly *guaranteed* in a significant way by the Fourteenth Amendment—*i. e.*, guaranteed against State invasion—are not to be deemed *"secured"* by it—apart from the question of how they originated or were created—nowhere appears in petitioners' argument.

Petitioners' construction of the provisions of the Civil Rights Act involves a manipulation of statutory language by which the word "created" would be deliberately substituted for the word "secured". It also involves the result that the Civil Rights Act would cover only a relatively insignificant portion of the civil rights protected by the Fourteenth Amendment, despite the evident intention of the Congress, as expressed in the very title of the Act, that the Act should cover all the civil rights protected by the Fourteenth Amendment.

The sole basis of petitioners' extraordinary contention is two cases—the *Slaughter House Cases*, 16 Wall. 36 (1873), and *United States* v. *Cruikshank*, 92 U. S. 542 (1876)—both reflecting a narrow view of the scope of the Fourteenth Amendment long since discountenanced by this Court. Some historical treatment becomes necessary.

The Fourteenth Amendment was ratified by the required number of States on July 9, 1868. One of the laws soon adopted in pursuance of the fifth section of the Amendment was an enforcement act of 1870, containing the criminal section quoted in the margin* (made the basis

* "That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed $5,000, and the imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to, and disabled from, holding any office or place of honor, profit, or trust created by the Constitution or laws of the United States" (16 Stat. 141).

of the prosecution in *United States* v. *Cruikshank,* discussed *infra*), now appearing in modified form in 18 U. S. C., Section 51.

In May, 1871, there arose for decision, in *United States* v. *Hall,* Fed. Cas. #15282 (C. C. Ala.), the question whether the right of free speech and peaceable assembly were "secured * * * by the constitution" within the meaning of that section. It was recognized by all that the question whether the rights were secured by the Constitution within the meaning of the enforcement law necessarily turned on whether they were secured by the Fourteenth Amendment since, as has been said above, the enforcement laws derive their basic substantive content from that Amendment. For the defense it was argued that the rights were not "secured," that is to say, were *in no sense protected* by the Fourteenth Amendment, on the theory that the Amendment was intended to protect against invasion only those rights originating in or created by other provisions of the Constitution—i.e., rights of National citizenship such as the right of free passage through the United States—and not inherent or fundamental rights such as free speech. (Only the "privileges or immunities" clause of the Amendment was deemed relevant to the inquiry; it was not then urged or believed that other clauses had any bearing.) The Circuit Court disposed of the contention with the utmost clarity, holding that the Amendment, by means of the "privileges or immunities" clause, protected against invasion not only the rights of National citizenship originating in or created by other provisions of the Constitution, but the fundamental or inherent rights as well. These latter rights were therefore "secured," *i. e.,* protected or guaranteed, by the Fourteenth Amendment, and therefore similarly secured by the enforcement law. The case held, in other words, that *all the rights protected or guaranteed by the Fourteenth Amendment must be deemed secured by it irrespective of whether, in a historical or metaphysi-*

cal sense, they originated in or were created by other provisions of the Constitution or, on the contrary, were fundamental and inherent. To repeat: the case stated with almost prophetic vision the present position of this Court on the scope of the Fourteenth Amendment—that the fundamental civil rights are protected by it—although the case reached its conclusion by means of the "privileges or immunities" clause rather than the due process clause. Further, the court in the *Hall* case took the common-sense position that all the civil rights in any way protected by the Fourteenth Amendment are secured by it and by the same token were secured by the enforcement law. Said the court:

> *"* * * are these rights secured to the people by the Constitution of the United States? We find that congress is forbidden to impair them by the first amendment, and the states are forbidden to impair them by the fourteenth amendment. Can they not, then, be said to be completely secured? They are expressly recognized, and both congress and the states are forbidden to abridge them. Before the fourteenth amendment, congress could not impair them, but the states might. Since the fourteenth amendment, the bulwarks about these rights have been strengthened, and now the states are positively inhibited from impairing or abridging them, and so far as the provisions of the organic law can secure them they are completely and absolutely secured."*

The *Hall case*—with the singular exception that the due process clause and not the "privileges or immunities" clause was destined to cover the fundamental civil liberties—represents present law.

It will now be shown that authorities cited by the petitioners fall within a stage of constitutional development intervening between the *Hall* case and the re-birth of the doctrine of the *Hall* case in *Gitlow* v. *New York* and *Fiske* v. *Kansas, supra,* and are now entirely outmoded.

Petitioners cite as the fulcrum of their argument the *Slaughter House Cases* (1873)—cases arising on appeal from the State court and in no way treating of jurisdiction under the Civil Rights Act. There the State of Louisiana had by statute granted a virtual monopoly on the herding and slaughtering of cattle to a private corporation. The butchers adversely affected contended that the Fourteenth Amendment, then lately enacted, rendered the law unconstitutional as violative of each of the principal clauses of Section 1 of the Amendment; the "privileges or immunities" clause being most strenuously urged. Mr. Justice MILLER, speaking for a closely divided Court, disposed of the due process clause as wholly irrelevant to the issues. He likewise disposed of the equal protection clause by the simple statement that it was confined to discrimination on the ground of race or color—"We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision". Turning to the "privileges or immunities" clause, he said that the clause protected only against State invasion of rights of National citizenship, *i. e.*, rights attaching to National citizenship by virtue of other provisions of the Constitution, and did not protect against invasion of the fundamental or inherent rights of State citizenship, among which was the right to be free of monopoly exclusion in pursuing a livelihood. This in effect nullified the clause, since rights inherent in National citizenship had been held, prior to the adoption of the Fourteenth Amendment, to be protected against State invasion by reference to the general doctrine of the supremacy of the Federal Constitution and Federal laws. See *Crandall* v. *Nevada*, 6 Wall. 35 (1867).

Petitioners read the *Slaughter House Cases* as holding that only rights of National citizenship as above described are "secured" by the Fourteenth Amendment. What the case in fact held was that it was only rights of National

citizenship that were *protected in any sense* by the Fourteenth Amendment. *In other words, the holding was only as to the substantive scope of the Fourteenth Amendment.* There was no holding or even an intimation, nor could there possibly have been, that such rights as are protected by the Fourteenth Amendment in any sense can be divided for any significant purpose between such as are "secured" and such as are not "secured" although guaranteed and protected.

Whatever may be the meaning of the *Slaughter House Cases,* it is clear that they have been subjected to great attrition by subsequent decisions of this Court, largely in line with the views of the dissenters therein led by Mr. Justice FIELD. It was his view that the "privileges or immunities" clause must be interpreted to include those privileges "which of right belong to the citizens of all free governments", including the right to be free of monopoly, and, as so interpreted, should invalidate the Louisiana law; it was his view, further, that the due process clause covered the situation and should invalidate the law.

If we take the clauses of the Fourteenth Amendment in order and indicate their present content, it is clear that the majority opinion in the *Slaughter House Cases* is not today indicative of the substantive scope of the Fourteenth Amendment and therefore it cannot be indicative of the scope or meaning of the Civil Rights Act. (1) As to the due process clause, the view of the dissenting Justices has gradually prevailed as to rights of property and they are now plainly protected by the clause. See *Butchers Union Slaughter-House Co.* v. *Crescent City Slaughter-House Co.,* 111 U. S. 746 (1884) (FIELD, *J.*, concurring); *Barbier* v. *Connolly,* 113 U. S. 27 (1885) (FIELD, *J.*, writing for the Court); *Mugler* v. *Kansas,* 123 U. S. 623 (1887); *Powell* v. *Pennsylvania,* 127 U. S. 678 (1888); *Minneapolis & St. Louis Ry.* v. *Beckwith,* 129 U. S. 26 (1889); Pound, "Liberty of Contract", 18 Yale L. J. 454, 470 (1909). In ad-

dition, the due process clause has at least since 1925 been interpreted to cover the basic civil rights involved in this case—the rights of free press, free speech and peaceable assembly; this Court has adopted the view of Mr. Justice FIELD, also expressed in his dissent in the *Slaughter House Cases,* that these rights are protected by the Federal Constitution against State invasion, although the development has taken place under the due process clause rather than under the "privileges or immunities" clause. See *Gitlow* v. *New York; Fiske* v. *Kansas; Near* v. *Minnesota; Lovell* v. *City of Griffin; De Jonge* v. *Oregon,* all *supra;* Warren, "The New Liberty under the Fourteenth Amendment", 39 Harv. L. R. 431 (1927). (2) As to the equal protection clause, it is of course too obvious for discussion that the majority opinion in the *Slaughter House Cases* has been entirely superseded. (3) As to the "privileges or immunities" clause, it is still of indefinite intent, although it seems due for extension in view of *Colgate* v. *Harvey,* 296 U. S. 404 (1935). But it has always been understood as including the right of free passage throughout the United States—a right involved in the case at bar.*

Finally, so far have the *Slaughter House Cases* lost caste that even the precise factual situation presented in them would probably be otherwise determined by this Court today. *Weaver* v. *Palmer Bros. Co.,* 270 U. S. 402 (1926); *Liggett Co.* v. *Baldrige,* 278 U. S. 105 (1928).

With like disregard of its holding and intervening constitutional development, petitioners stress *United States* v. *Cruikshank* (1876). As has been noted, that case involved a criminal prosecution under the section of the enforcement law of 1870 also involved in *United States* v. *Hall, supra.* The case was decided on the narrow ground that the particular indictment was not sufficiently definite in its terms—significantly enough none of the dissenting justices

* So far as *United States* v. *Wheeler,* 254 U. S. 281 (1920), cited by petitioners, indicates any opposite view, it must be deemed qualified by the later decision in *Colgate* v. *Harvey, supra.*

in the *Slaughter House Cases* found it necessary to register a dissent in the *Cruikshank* case. We need not pause on the *Cruikshank* case at any length, because there as in the *Slaughter House Cases* the opinion merely reflected a narrow view of the substantive scope of the Fourteenth Amndment which, in the first place, in no way supports petitioners' attempted distinction between rights "secured" and rights "created", and, in the second place, is plainly not the law today. The opinion contains a *dictum* to the effect that the right of peaceable assembly* is a right inherent or fundamental, not attaching to National citizenship or originating in or created by any provision of the Constitution, and therefore a right *in no sense protected* by the Fourteenth Amendment. (Thus *United States* v. *Hall* was impliedly overruled,—but only temporarily, for the holding of the *Hall* case is today good law supported by authoritative decisions of this Court.) Having declared that the right of peaceable assembly was in no sense protected by the Fourteenth Amendment, the Court had no occasion to determine whether it was secured in the sense used in the enforcement law—*it simply was not covered as a matter of substantive interpretation of the Fourteenth Amendment.* It may be added that so far as the *Cruikshank* case also contains a *dictum* on the subject of the equal protection clause it merely reflects the view previously advanced in the *Slaughter House Cases* which is certainly no longer the law.

There is, then, no conceivable basis in the authorities upon which the petitioners principally rely for their conception that rights protected by the Fourteenth Amendment may be summarily categorized as, on the one hand, rights "secured" because originating in or created by other provisions of the Constitution and thereupon guaranteed by the Fourteenth Amendment (rights of National

* Always excepting the case of peaceable assembly to petition any National agency for a redress of grievances, which the Court acknowledges to be a right of National citizenship.

citizenship), and, on the other hand, rights not "secured" because not originating in or created by other provisions of the Constitution, but nonetheless guaranteed by the Fourteenth Amendment. The purported distinction rests, as we have seen, only on early cases declaring that rights other than those of National citizenship were *in no sense protected* by the Fourteenth Amendment and these cases are no longer good law. As the Fourteenth Amendment now protects and guarantees both kinds of rights (assuming that any distinction whatever can be sensibly made), it "secures" them; and by the same token they are covered by the Civil Rights Act. The Civil Rights Act keeps pace with the substantive expansion of the Fourteenth Amendment to include the fundamental civil rights. The whole question is adequately disposed of in the opinion of the Circuit Court of Appeals herein as follows (4 R. 123):

> *"Since the statutory provisions set out above were enacted originally to enforce recognition by the states of the civil rights secured by the Fourteenth Amendment and in view of the fact that the civil rights to which the Fourteenth Amendment affords protection are secured by it only in the sense of being protected or guaranteed against invasion by the states, we think that it is entirely clear that Section 24 (14) of the Judicial Code, uses the phrase 'secured by the Constitution' in that sense which is its plain and ordinary meaning, viz., to put beyond hazard of losing."*

We may dispose briefly of the other authorities claimed by petitioners to conflict with the view here expressed and adopted by the Circuit Court of Appeals. *Holt* v. *Indiana Manufacturing Co.*, 176 U. S. 68 (1900), was a suit to enjoin enforcement of a tax statute on the ordinary grounds—impairment of obligation of contract, due process and equal protection. No distinctive *civil* rights were involved and the Court properly stated, as to the sections of the Civil Rights Act there relied on, "it is

sufficient to say that they refer to civil rights only, and are inapplicable here" (p. 72). The distinction between the *Holt* case and the case at bar is that distinctive civil rights are present here beyond all question. On the same ground *Marcus Brown Holding Co.* v. *Pollak,* 272 Fed. 137 (D. N. Y. 1920), is distinguishable. That was a motion to dismiss on jurisdictional grounds a bill seeking to restrain a tenant from continued occupancy of leased premises after expiration of the lease, and to enjoin enforcement of a New York statute designed to prevent extortionate rents by depriving landlords of the right to evict tenants by summary proceedings and making it a defense to an action for rent to show that the amount demanded was unreasonable. Plainly the right involved was not distinctively civil, and jurisdictional amount had to be shown under Section 24 (1) of the Judicial Code. Of *Gobitis* v. *Minersville School District,* 21 F. Supp. 581, D. Pa. (1938), it is enough to say that the expression as to subdivision (14) is pure *dictum* unsupported by authority. That the case has no specific bearing herein is shown as clearly as may be by the fact that Judge MARIS, who decided it, concurred in the majority opinion of the Circuit Court of Appeals in the case at bar.

At some points in their brief, petitioners squint in the direction of arguing, as an original proposition, apart from their historical analysis already shown to be erroneous, that the word "secured" in its ordinary and normal signification means "created" as distinguished from "protected" or "guaranteed." The short answer to this contention is found in the very cases decided by this Court interpreting the Fourteenth Amendment to include the fundamental civil rights. In those cases this Court has used the words "secured," "guaranteed," and "protected" interchangeably. See *Gitlow* v. *New York, supra,*

p. 666 ("* * * freedom of speech and of the press which is *secured* by the Constitution * * *"); *Grosjean* v. *American Press Co.*, *Powell* v. *Alabama*, *Near* v. *Minnesota*, *supra*; *Stromberg* v. *California*, 283 U. S. 359 (1931). The language of Mr. Justice HUGHES in *Truax* v. *Raich*, *supra*, p. 41, may be taken as typical of the use of the word "secured" as meaning what it customarily means, namely, guarantee, protect, insure against hazard of loss, etc.:

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to *secure*."

See also *State Board of Health* v. *Diamond Mills Paper Co.*, 63 N. J. Eq. 111, 113 (1902), where the court said:

> "Giving the word 'secure' the meaning of 'guard' or 'protect', which is one of its ordinary meanings, it seems to me that the title accurately expresses the object."

Standard dictionaries define the word "secure" in the same way. See, *e. g.*, Funk & Wagnalls, *Standard Dictionary* (1934 ed.):

> "To make secure, protect, or free from danger, risk or hazard; make safe; as, to *secure* a town by a wall.
>
> "To make sure against risk of loss, or to insure the payment, return or receipt of; make certain of having or receiving some good; assure; guarantee."

There is no basis, then, in its ordinary signification, for a limitation of the word "secure" to mean "grant", "create in the first instance", or the like.

Plainly the civil rights here in issue are secured by the Fourteenth Amendment (and therefore by the Civil Rights Act) in the simple sense that, whereas in the absence of the Amendment a State could impair those rights with im-

punity so far as the Federal Constitution was concerned, they are by the Amendment forbidden to do so. As the Circuit Court of Appeals aptly said, the statutes use the phrase "secured by the Constitution" "in that sense which is its plain and ordinary meaning, *viz., to put beyond hazard of losing*" (4 R. 123).

In interpreting the statutory language as just indicated, the Circuit Court of Appeals quoted and relied upon *Smith* v. *United States*, 157 Fed. 721 (C. C. A. 8th), *cert. den.*, 208 U. S. 618 (1908). The court dealt there with the question whether the right to be free from involuntary servitude was a right "secured" by the Constitution. It was argued there, as here, that the right was inherent and fundamental, and was not "secured" by the Thirteenth Amendment in the sense of having been granted by that Amendment or created by it in the first instance. The court held, in a closely reasoned opinion, that the word "secured" included the concept of additional protection or guaranty. Said the court (pp. 724-5):

> "* * * the statute protects a right 'secured' by the Constitution and laws; not one originating in, created, or granted by them. This discriminating use of words is significant, and in our opinion, conclusive against defendant's contention. The Constitution ordains that neither slavery nor involuntary servitude shall exist within the United States, etc. Nothing can more effectually secure the right of freedom from slavery or involuntary servitude than this peremptory and all comprehensive prohibition against their existence anywhere within the jurisdiction of the United States. * * * It [the statute] was enacted in view of that amendment and the right undertaken to be protected by it is undoubtedly a right secured by the amendment.
>
> "The cases cited by learned counsel in support of their view (*Ex parte Yarbrough*, 110 U. S. 651; *United States* v. *Waddell*, 112 U. S. 76; *Logan* v. *United States*, 144 U. S. 263; *In re Quarles & Butler*, 158 U. S. 532) relate generally to conspiracies

to injure or intimidate a citizen in the exercise of some conventional right actually created or conferred by the Constitution or by some law as distinguished from a natural right and therefore do not make against our conclusion in the case. A right which has been conferred by law is manifestly secured by that law. *Such concession, however, is no authority for the contention that a right secured by law must necessarily have been conferred by some law.*"

The foregoing shows that the civil rights here involved are "secured" within the meaning of the pertinent statutes, as rights protected or guaranteed, even if not "created". But even if, following petitioners' theory, we should rewrite the statutes and substitute the word "created" for the word "secured", there is no sound reason why the rights here in issue may not be deemed created by the Constitution.

First, the rights are created by the *Fourteenth Amendment* in the sense that the Amendment created a new set of sanctions to protect against their invasion. There may be such things as rights which exist apart from an effective means for their enforcement, but if there are such, they are irrelevant to the law; the law takes no notice of them. In realistic terms a right can only be defined in terms of what a party aggrieved by its violation can do about it.

Prior to the adoption of the Fourteenth Amendment (and its judicial interpretation to cover the field of civil rights) a person whose civil liberties had been abridged by a State might get redress provided the State constitution or laws covered the case, and not otherwise. This was the extent of the sanctions which he could invoke. Today, upon identical facts, he may get redress no matter what the State constitution or laws provide, by direct reference to the Federal Constitution. That Federal sanction is in every true sense a new right "created" in

the first instance by the Fourteenth Amendment, a part of the Constitution, and thus covered by the Civil Rights Act upon petitioners' own theory.

This conclusion seems especially clear in respect of rights flowing from the *equal protection clause*. The right not to be discriminated against by State law or State action was certainly a new one.

Second, the civil rights here in issue may also be said to have been created by a *provision of the Constitution other than the Fourteenth Amendment, i. e.*, the First Amendment (possibly also the Fourth). Certainly the rights created by the Bill of Rights were new rights freshly granted or created, since the National Government whose power they effectively limited, was a new entity. The fact that the Fourteenth Amendment, as judicially construed, affords additional protection to the same basic rights, does not militate against the fact that the First Amendment created them. In order to satisfy petitioners' definition of the word "secured" as meaning "created in the first instance" by the Constitution, it is presumably not necessary to find that the right involved was created by the Fourteenth Amendment itself; indeed, petitioners themselves insist that rights of National citizenship are not created by the Fourteenth Amendment but by other provisions of the Constitution—which proves that any part of the Constitution will serve as the source of creation. Judge Biggs presents this point below as follows (4 R. 124):

> "But if we were of the opinion that the words used in the statute 'secured by the Constitution' mean created in the first instance by the Constitution we would still be compelled to hold that these rights were secured by the Constitution since, as we have seen, they were secured in that sense to the people of this country by the First and Fourth Amendments which conferred these rights upon citizens of the Federal government and protected them against infringement by that government."

C. Jurisdiction existed under Section 24 (12) of the Judicial Code (conspiracy respecting civil rights).

Of special significance in this case, as has already been shown, is the District Court's express finding, confirmed by the Circuit Court of Appeals below, that the petitioners' unlawful activities, vigorously denounced by both of these courts, were performed in pursuance of a "deliberate policy" which petitioners had "adopted and enforced" and which they threatened to continue.

It was urged by respondents both in the District Court and in the Circuit Court of Appeals that jurisdiction existed to subject to injunctive process those who thus *conspired* to deprive others of their fundamental constitutional rights. While the District Court, in addition to finding other bases of jurisdiction, so ruled (Conclusion 1, 7), the Circuit Court of Appeals did not discuss this particular jurisdictional ground, as the other bases urged by the respondents were found to be entirely sufficient. It is submitted that an independent and sufficient ground of jurisdiction derives from the Federal statutes affording relief from *conspiracies* having as their purpose the deprivation of civil rights.

Section 47 of Title 8 of the United States Code, derived from the Civil Rights Act of 1871, provides in its third subdivision:

> "*Same* [conspiracy]; *to deprive citizen of rights or privileges.* If two or more persons in any State or Territory *conspire* or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; * * * in any case of con-

spiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his *person or property*, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

The conspiracy for which a cause of action is thereby created is denounced as criminal by Section 19 of the Criminal Code (18 U. S. C., Section 51), which reads as follows:

"*Conspiracy to injure persons in exercise of civil rights.* If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

It will thus be noted that a conspiracy aimed to deprive "any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws" subjects the conspirators to a civil action under Section 47, above quoted, and if such persons in combination attempt to "injure * * * any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States" they thereby subject themselves to criminal responsibility under Section 51, above quoted.

To accord an effective means of enforcement of these substantive provisions, Congress in Section 24 of the Judicial Code excepted from the general requirements of jurisdictional amount suits concerning civil rights impaired by virtue of the type of conspiracy condemned by Section 47. This original jurisdiction in the Federal courts is granted by the twelfth subdivision of Section 24 of the Judicial Code:

> "*Suits concerning civil rights.* Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8."

This Court has assumed the existence of Federal jurisdiction to enjoin a conspiracy having for its purpose the deprivation of rights secured by the Constitution or laws of the United States. That the petitioners, individually and as public officials, acting in concert, premeditatedly and deliberately deprived the respondents of their basic civil rights, was found by both the District Court and the Circuit Court of Appeals. Authority for the existence of this jurisdiction in conspiracy cases appears in the several opinions in *Pennsylvania R. System* v. *Pennsylvania R. Co.*, 296 Fed. 220 (D. Pa. 1924), *aff'd*, 1 F. (2d) 171 (C. C. A. 3rd, 1924), *aff'd*, 267 U. S. 203 (1925). Although the complaint there was ultimately dismissed, the courts, including this Court, recognized Federal jurisdiction to grant equitable relief to persons injured by the continuance of conspiracies designed to deprive them of rights secured by Federal law. In that case a bill was filed by two railroad unions against a carrier alleging that the Labor Board created by the Transportation Act of 1920 had prescribed how the representatives of the railroad company and its employees, for the purpose of

settling a dispute as to working conditions, should be elected; that the railroad carrier had refused to comply with the Board's decision; and that the railroad officials had conspired to defeat the provisions of the Act and to deprive the employees of the rights with which the Act intended to invest them in their dealings with the railroad. The unions contended that this constituted a conspiracy in violation of Section 51, and that they were entitled to injunctive relief.

Had the acts of the railroad actually been in pursuance of a conspiracy to violate the Federal Transportation Act, the opinion of this Court and of the lower courts in that case, by clear implication, showed that the equitable relief prayed for would have been granted. In the District Court it had been urged that the railroad unions had an adequate remedy at law, but the court found otherwise and in addition found that the railroad's argument that no equities were disclosed growing out of the conspiracy charge was unsound.

The Circuit Court of Appeals pointed out that the railroad unions grounded their complaint upon what they described as their "civil and statutory rights," and averred a conspiracy to deprive them of these rights, and prayed that the injunctive remedy of the Federal court of equity—there being no adequate remedy at law—be invoked to restrain the railroads from continuing and completing their conspiracy (1 F. [2d], p. 176). The dismissal of the bill was affirmed, however, for as the court pointed out (1 F. [2d], p. 177):

> "The thing here charged against the Company was conduct which under the terms of the Transportation Act and in the light of the decision of the Supreme Court * * * was not unlawful either in purpose or in means employed to carry out the purpose. It follows that in their conspiracy charge the complainants are not aided by a statutory right."

This was so because, while the Act created a Labor Board, the sanctions of publication and public opinion were the only methods of forcing the railroad company to obey the Board's decision, so that in the absence of a *duty* on the part of the railroad to carry out the terms of such a decision, a combination to violate it could not be made the basis of a charge of unlawful conspiracy in violation of Section 51 against which a court of equity might grant relief by injunction." This Court said (267 U. S., p. 210):

> "The whole case for Federation No. 90 rests upon the contention that the conduct of the Company and its officers is a statutory offense in the nature of a conspiracy under the provisions of Sec. 19 of the Criminal Code, which provides that if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the laws of the United States, they shall be punished; and further that injunction will lie to restrain the means for promoting such conspiracy. Moreover, it is claimed that this is a conspiracy at common law, because it is a combination to accomplish an unlawful result by unlawful means, and actionable. Citing *Pettibone* v. *United States*, 148 U. S. 197, and *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 465. The whole issue, therefore, is whether the provisions of Title III in pointing out what Congress wished the parties to the dispute to do was intended by Congress to be a positive, obligatory law, creating an enforceable duty such that a combination by the Company and its officials to violate it is a conspiracy."

And again (p. 217):

> "We do not think Congress, while it would deprecate such action, intended to make it criminal or legally actionable. Therefore, the bill of complaint does not aver a conspiracy, and without that, equitable relief cannot be granted."

It appears that no diversity of citizenship existed in that case and no mention was made of jurisdictional amount. The suit was grounded upon an alleged conspiracy to deprive the unions of rights which they claimed under a Federal statute. In the instant case, a more flagrant type of conspiracy in the form of a combination of public officials to deprive the respondents of their rights under the *Federal Constitution and laws* is shown.

The theory behind the type of relief afforded in such cases is well recognized. When basic rights are repeatedly or continuously violated by concerted acts of public officials, the action for damages mentioned in subdivision (12) becomes inadequate and upon familiar principles equitable relief is granted. For instance, the Federal courts have granted relief against continuing injuries to avoid a multiplicity of suits at law. *Royal Baking Powder Co.* v. *Emerson*, 270 Fed. 429 (C. C. A. 8th, 1920), *cert. den.*, 260 U. S. 752 (1922); *Dearborn Pub. Co.* v. *Fitzgerald*, 271 Fed. 479 (N. D. Ohio, 1921); *Phoenix L. Ins. Co.* v. *Bailey*, 13 Wall. 616 (1871). Similarly, a Federal court of equity will intervene for the prevention of threatened injuries even though a remedy at law for monetary damages may be available. *Ex parte Young*, 209 U. S. 123 (1908); *American Steel & Wire Co.* v. *Davis*, 261 Fed. 800 (D. Ohio, 1919); *American Mercury Inc.* v. *Chase*, 13 F. (2d) 224 (D. Mass. 1926); *In re Beine*, 42 Fed. 545 (D. Kans. 1890). The evidence in this case discloses that a letter written by the Corporation Counsel of Jersey City on December 20, 1937 (Exh. P.-36), with full knowledge and approval of the petitioners, threatened arrest and prosecution of the respondents if they dared attempt to exercise in Jersey City those rights which both courts below found to be undeniably vested in respondents.

Petitioners have left the foregoing argument virtually unanswered. Subdivision (12) stands as a sound basis upon which the jurisdiction of the District Court was sustained.

POINT II

Subsidiary Objections Refuted

A. All of petitioners' actions here enjoined were performed in their capacities as municipal officers, and constituted State action within the meaning of the Fourteenth Amendment and applicable laws of the United States.

Under their Point III (1) petitioners state that the bill of complaint is bare of allegations that they acted as agents of the State. This is adequately answered by the following paragraphs of the bill of complaint: 3, 10, 11, 12, 14, 15, 18, 19 and 20 to 24 inclusive (R. 6, ff.).

The ordinances here involved were adopted and applied by petitioners under a general police power delegation to New Jersey municipalities by the Legislature of the State in the so-called "Home Rule Act", R. S. 40:48-1 and 40:67-1, and in R. S. 40:72-3 as to cities under the Commission form of government (R. 1031).

Judge Biggs describes the three types of acts enjoined by the decree as follows: "(1) acts pursuant to the express mandate of city ordinances found to be void on their face; (2) acts carried on under color of city ordinances discriminatively and therefore unconstitutionally applied; and (3) acts not under the authority of any ordinance or statute but committed under color of municipal office and as part of a deliberate municipal policy" (4 R. 126).

Judge Biggs then considers these three categories of wrongful action in the light of the pertinent decisions of this Court, and all are held to be State action, within the meaning of the constitutional limitations. In addition to the cases cited by Judge Biggs, there may be mentioned: *Ex parte Young*, 209 U. S. 123 (1908); *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20 (1907); *Norris* v. *Alabama*, 294 U. S. 587 (1935).

It is certainly novel doctrine that municipal officers who choose to be utterly lawless may by that very means prevent the assumption of jurisdiction by a Federal court under the Constitution and laws of the United States. The cases cited by petitioners to sustain that proposition are widely out of point.

B. There is jurisdiction to grant ancillary relief.

Under their Point III (m) petitioners consider various hypothetical situations depending upon this Court's rulings on jurisdiction under Section 24, subdivisions (1), (14), and (12), whch they contend would call for deletion of some of the relief granted. Our position is that Federal grounds are involved throughout, but even if some incidental *non-Federal* grounds are present, it is enough to say, first, that such grounds are integrated with or ancillary to Federal grounds and cannot, therefore, either oust the court of jurisdiction or prevent it from issuing a decree based partially upon non-Federal grounds; second, the controlling principle as enunciated by this Court is that once jurisdiction has properly attached on a substantive Federal ground, the court may grant *complete relief* by determining the questions in issue, including those arising under State law, and this *irrespective even of the disposition of the Federal question.* *Hurn* v. *Oursler,* 289 U. S. 238, 246 (1933); *Levering & Garrigues Co.* v. *Morrin,* 289 U. S. 103 (1933); *Bohler* v. *Callaway,* 267 U. S. 479 (1925); *Chicago G. W. R. Co.* v. *Kendall,* 266 U. S. 94 (1924); *Greene* v. *Louisville and Inter R. Co.,* 244 U. S. 499 (1917).

C. The status of the respondent American Civil Liberties Union and the unincorporated labor unions was correctly adjudged below.

The Circuit Court of Appeals said (4 R. 126):

> "The [petitioners] contend that because one of the [respondents] is a corporation and others are unincorporated associations, they are not entitled to enjoy some of the civil rights which are the subject of the suit. All of the [respondents] referred to, however, are membership corporations or associations, and it clearly appears that the suit was brought by them for the benefit of their members. In our opinion, these [respondents] were proper parties and able to conduct the suit in representative capacities on behalf of the interests of their respective members. *International News Service* v. *Associated Press*, 248 U. S. 215."*

This is a complete answer to the petitioners' anomalous "artificial entity" argument. The court was unanimous on this point. It should be noted that there is only one corporate respondent, all the respondent labor unions being unincorporated associations. As to the latter, there can be no question of their right to assert deprivations of liberty since they are only the sum of their individual members. The only corporation, namely the American Civil Liberties Union, is not a business corporation but a membership corporation which, as the Circuit Court of Appeals held, similarly reflects the interests of its individual members. See also Kvos, *Inc.* v. *Associated Press*, 299 U. S. 269, 279 (1936). Furthermore, the rights of these groups here vindicated, while distinctively civil in nature, may be said to have a property aspect as well, since, as we

*In the *Associated Press* case the standing of the Associated Press, a non-profit membership corporation, to sue for injunctive relief was seriously challenged. This Court held that it could properly conduct the suit on behalf of and for the benefit of its individual members, and sustained its jurisdictional standing.

have shown, they cannot carry on their functions in the absence of freedom from personal restraint, freedom of speech, of the press, and the like.

However, even if the respondents other than the individual respondents are to be treated, contrary to fact, as ordinary corporations, and even if the rights involved are to be treated, contrary to fact, as having no property aspect, there is no substance in petitioners' contention that those circumstances debar the respondents of relief. It is not the rule that corporations may not complain of certain deprivations, at least, of their liberty. In *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936), this Court held that a State may not deprive a corporation of freedom of the press by imposing a previous restraint upon it. Apparently, the same objection was raised in that case as here to the applicability of the Fourteenth Amendment to corporations. Mr. Justice SUTHERLAND, speaking for the unanimous Court, disposed of it in short order (p. 244):

> "But a corporation is a 'person' within the meaning of the equal protection and due process of law clauses which are the clauses involved here."

The Justice specifically negatived the idea that this Court was primarily concerned with the property aspect of the question presented, pointing out that historically the vice inherent in special taxes on the press was not property deprivation (p. 247):

> "The aim of the struggle was not to relieve taxpayers from a burden but to establish and preserve the right of the English people to full information in respect of the doings and misdoings of their government."

A ruling that corporations are not entitled to the benefit of the liberty clause of the Fourteenth Amendment in so far as freedom of speech and press are concerned would be unthinkable. Three-quarters of the nearly 1,000

publishers of daily and Sunday newspapers in the United States are corporate entities (Editor and Publisher, Year Book for 1937). If the petitioners are correct in their contentions that a corporation may not complain that it has been deprived of liberty of the press, the States are entirely free to impose the worst possible kinds of previous restraint on all these corporations, provided only that such restraints do not involve property deprivations. Common sense and the clear language of the *Grosjean* case establish that this is not the constitutional rule.

The *Grosjean* case does not stand alone in holding that to some extent at least the liberty guaranty of the Fourteenth Amendment extends to corporations. See, *e. g., West Coast Hotel Company* v. *Parrish*, 300 U. S. 379 (1937). The entire opinion of the Chief Justice in the *Parrish* case is devoted to a consideration of whether the *"liberty"* of the defendant hotel company was impaired by the Washington Minimum Wage Law under attack (see opinion *passim*, and especially at p. 391).

In so far as the decree rests on a denial of equal protection as well as on a deprivation of liberty without due process of law, the jurisdictional standing of the A. C. L. U. and the respondent labor unions is doubly clear. For it is well settled that "corporations are as much entitled to the equal protection of the laws guaranteed by the Fourteenth Amendment as are natural persons." Mr. Justice ROBERTS in *Liggett Co.* v. *Lee*, 288 U. S. 517, 536 (1933), citing *Southern Railroad Company* v. *Greene*, 216 U. S. 400; *Kentucky Finance Corp.* v. *Paramount Auto Exchange Corp.*, 262 U. S. 544; *Power Manufacturing Co.* v. *Saunders*, 274 U. S. 490; *Liggett Co.* v. *Baldridge*, 278 U. S. 105; and *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239.

The petitioners are likewise in error when they challenge in procedural terms the right of the various unincorporated respondents to sue. This phase of their

objection, of course, does not go to the American Civil Liberties Union which is clearly qualified to sue since it is a membership corporation. As to the respondent labor unions, there is no longer any doubt as to the standing of unincorporated associations as litigants in the Federal Courts. The question was settled by this Court in 1922. *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344. See also, *Hansel* v. *Purnell*, 1 F. (2d) 266, 269 (C. C. A. 6th, 1924), *cert. den.*, 266 U. S. 617 (1924), where the court said:

> "The Israelite House of David is a voluntary association. As such it is a distinct entity and may sue or be sued in the Federal Court."

The same is true of respondent labor unions here. See also, Rule 17 (b) of the Rules of Civil Procedure.

D. The decree is definite, practicable and enforcible.

With reference to the petitioners' objections to the decree on the ground of its enforcibility (see their Point II), the Circuit Court of Appeals said:

> "The appellants contend that it is not feasible for the court below to enforce the provisions of the decree entered by it and that therefore it should not have been made. *Giles* v. *Harris*, 189 U. S. 475. More specifically, the appellants' contention is that it would require the court below to exercise supervisory powers over the administration of government in Jersey City and to interfere with the orderly exercise of governmental duties. The appellants also contend that the court below has in effect constituted itself an ordinance making body and has involved itself directly in the administration of the public business of Jersey City.
>
> "We consider these objections to the decree to be without merit and consider it unnecessary to treat them in detail. We state that in our opinion the decree is enforcible and does not substitute the

> will of the court for that of the governing authority of Jersey City. Moreover, the decree is carefully worded. The police are left free to pursue the duties placed upon them by law, and in so far as they act within the scope of the law their activities are in no wise interfered with or hindered. The authorities of Jersey City, by the terms of the decree carefully drawn by the court below, are free to carry out their duties in respect to preserving the safety of the lives and property of the inhabitants of Jersey City within the structure of existing law" (4 R. 119-20).

Little need be added to the words of the court below. The objections to the form of the decree as to all issues except that of public meetings are plainly captious. The objections to the form of the decree as to public meetings are similarly a measure, not of the inadequacy of the provisions, but of petitioners' querulous disinclination to abide by them. The provisions are specific to a point where it is impossible to credit the petitioners' expressed inability to understand them. Jersey City is required to follow the pattern which prevails in the rest of the country: the petitioners are commanded to issue permits for public meetings provided application therefor is made three days in advance to the Director of Public Safety (thus assuring notice) unless there is conflict with recreational schedules (in the case of the parks) or with the easement of public passage (in the case of the streets). In addition they are ordered to furnish adequate police protection at meetings held, consistent with their ability to protect the safety of the inhabitants of the City. The decree on public meetings is so clear, simple and unambiguous that it reads like a primer for municipal officials.

If the judgment of the Circuit Court of Appeals is affirmed by this Court, it is submitted that Jersey City will find no difficulty in understanding the decree and living up to it.

CONCLUSION.

The decree under review should be affirmed.

Respectfully submitted,

MORRIS L. ERNST,
SPAULDING FRAZER,
Solicitors for Respondents.

SPAULDING FRAZER,
DAVID STOFFER,
LEE PRESSMAN,
MORRIS L. ERNST,
BENJAMIN KAPLAN,
HARRIET F. PILPEL,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 651.—October Term, 1938.

Frank Hague, Individually and as Mayor of Jersey City, et al., &c., Petitioners,
vs.
Committee for Industrial Organization, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[June 5, 1939.]

Mr. Justice Butler:

The judgment of the court in this case is that the decree is modified and as modified affirmed. Mr. Justice Frankfurter and Mr. Justice Douglas took no part in the consideration or decision of the case. Mr. Justice Roberts has an opinion in which Mr. Justice Black concurs, and Mr. Justice Stone an opinion in which Mr. Justice Reed concurs. The Chief Justice concurs in an opinion. Mr. Justice McReynolds and Mr. Justice Butler dissent for reasons stated in opinions by them respectively.

Mr. Justice Roberts delivered an opinion in which Mr. Justice Black concurred.

We granted certiorari as the case presents important questions in respect of the asserted privilege and immunity of citizens of the United States to advocate action pursuant to a federal statute, by distribution of printed matter and oral discussion in peaceable assembly; and the jurisdiction of federal courts of suits to restrain the abridgment of such privilege and immunity.

The respondents, individual citizens, unincorporated labor organizations composed of such citizens, and a membership corporation, brought suit in the United States District Court against the petitioners, the Mayor, the Director of Public Safety, and the Chief of Police of Jersey City, New Jersey, and the Board of Commissioners, the governing body of the city.

The bill alleges that acting under a city ordinance forbidding the leasing of any hall, without a permit from the Chief of Police, for a public meeting at which a speaker shall advocate obstruction of the Government of the United States or a state, or a change of government by other than lawful means, the petitioners, and their subordinates, have denied respondents the right to hold lawful meetings in Jersey City on the ground that they are Communists or Communist organizations; that pursuant to an unlawful plan, the petitioners have caused the eviction from the municipality of persons they considered undesirable because of their labor organization activities, and have announced that they will continue so to do. It further alleges that acting under an ordinance which forbids any person to "distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet", the petitioners have discriminated against the respondents by prohibiting and interfering with distribution of leaflets and pamphlets by the respondents while permitting others to distribute similar printed matter; that pursuant to a plan and conspiracy to deny the respondents their Constitutional rights as citizens of the United States, the petitioners have caused respondents, and those acting with them, to be arrested for distributing printed matter in the streets, and have caused them, and their associates, to be carried beyond the limits of the city or to remote places therein, and have compelled them to board ferry boats destined for New York; have, with violence and force, interfered with the distribution of pamphlets discussing the rights of citizens under the National Labor Relations Act; have unlawfully searched persons coming into the city and seized printed matter in their possession; have arrested and prosecuted respondents, and those acting with them, for attempting to distribute such printed matter; and have threatened that if respondents attempt to hold public meetings in the city to discuss rights afforded by the National Labor Relations Act, they would be arrested; and unless restrained, the petitioners will continue in their unlawful conduct. The bill further alleges that respondents have repeatedly applied for permits to hold public meetings in the city for the stated purpose, as required by ordinance,[1] although they do not admit the

[1] "The Board of Commissioners of Jersey City Do Ordain:
"1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public

validity of the ordinance; but in execution of a common plan and purpose, the petitioners have consistently refused to issue any permits for meetings to be held by, or sponsored by, respondents, and have thus prevented the holding of such meetings; that the respondents did not, and do not, propose to advocate the destruction or overthrow of the government of the United States, or that of New Jersey, but that their sole purpose is to explain to workingmen the purposes of the National Labor Relations Act, the benefits to be derived from it, and the aid which the Committee for Industrial Organization would furnish workingmen to that end; and all the activities in which they seek to engage in Jersey City were, and are, to be performed peacefully, without intimidation, fraud, violence, or other unlawful methods.

The bill charges that the suit is to redress "the deprivation, under color of state law, statute and ordinance, of rights privileges and immunities secured by the Constitution of the United States and of rights secured by laws of the United States providing for equal rights of citizens of the United States" . . . . It charges that the petitioners' conduct "is in violation of their [respondents] rights and privileges as guaranteed by the Constitution of the United States." It alleges that the petitioners' conduct has been "in pursuance of an unlawful conspiracy . . . . to injure oppress threaten and intimidate citizens of the United States, including the individual plaintiffs herein, ... in the free exercise and enjoyment of the rights and privileges secured to them by the Constitution and laws of the United States." . . . .

The bill charges that the ordinances are unconstitutional and void, or are being enforced against respondents in an unconstitutional and discriminatory way; and that the petitioners, as officials of the city, purporting to act under the ordinances, have deprived

---

buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

"2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

"3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

"4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

respondents of the privileges of free speech and peaceable assembly secured to them, as citizens of the United States, by the Fourteenth Amendment. It prays an injunction against continuance of petitioners' conduct.

The bill alleges that the cause is of a civil nature, arising under the Constitution and laws of the United States, wherein the amount in controversy exceeds $3,000, exclusive of interest and costs; and is a suit in equity to redress the deprivation, under color of state law, statute and ordinance, of rights, privileges and immunities secured by the Constitution of the United States, and of rights secured by the laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

The answer denies generally, or qualifies, the allegations of the bill but does not deny that the individual respondents are citizens of the United States; denies that the amount in controversy "as to each plaintiff and against each defendant" exceeds $3,000, exclusive of interest and costs; and alleges that the supposed grounds of federal jurisdiction are frivolous, no facts being alleged sufficient to show that any substantial federal question is involved.

After trial upon the merits the District Court entered findings of fact and conclusions of law and a decree in favor of respondents.[2] In brief, the court found that the purposes of respondents, other than the American Civil Liberties Union, were the organization of unorganized workers into labor unions, causing such unions to exercise the normal and legal functions of labor organizations, such as collective bargaining with respect to the betterment of wages, hours of work and other terms and conditions of employment, and that these purposes were lawful; that the petitioners, acting in their official capacities, have adopted and enforced the deliberate policy of excluding and removing from Jersey City the agents of the respondents; have interfered with their right of passage upon the streets and access to the parks of the city; that these ends have been accomplished by force and violence despite the fact that the persons affected were acting in an orderly and peaceful manner; that exclusion, removal, personal restraint and interference, by force and violence, is accomplished without authority of law and without promptly bringing the persons taken into custody before a judicial officer for hearing.

[2] 25 F. Supp. 127.

The court further found that the petitioners, as officials, acting in reliance on the ordinance dealing with the subject, have adopted and enforced a deliberate policy of preventing the respondents, and their associates, from distributing circulars, leaflets, or handbills in Jersey City; that this has been done by policemen acting forcibly and violently; that the petitioners propose to continue to enforce the policy of such prevention; that the circulars and handbills, distribution of which has been prevented, were not offensive to public morals, and did not advocate unlawful conduct, but were germane to the purposes alleged in the bill, and that their distribution was being carried out in a way consistent with public order and without molestation of individuals or misuse or littering of the streets. Similar findings were made with respect to the prevention of the distribution of placards.

The findings are that the petitioners, as officials, have adopted and enforced a deliberate policy of forbidding the respondents and their associates from communicating their views respecting the National Labor Relations Act to the citizens of Jersey City by holding meetings or assemblies in the open air and at public places; that there is no competent proof that the proposed speakers have ever spoken at an assembly where a breach of the peace occurred or at which any utterances were made which violated the canons of proper discussion or gave occasion for disorder consequent upon what was said; that there is no competent proof that the parks of Jersey City are dedicated to any general purpose other than the recreation of the public and that there is competent proof that the municipal authorities have granted permits to various persons other than the respondents to speak at meetings in the streets of the city.

The court found that the rights of the respondents, and each of them, interfered with and frustrated by the petitioners, had a value, as to each respondent, in excess of $3,000, exclusive of interest and costs; that the petitioners' enforcement of their policy against the respondents caused the latter irreparable damage; that the respondents have been threatened with manifold and repeated persecution, and manifold and repeated invasions of their rights; and that they have done nothing to disentitle them to equitable relief.

The court concluded that it had jurisdiction under Sec. 24(1) (12) and (14) of the Judicial Code;[3] that the petitioners' official policy and acts were in violation of the Fourteenth Amendment, and

[3] 28 U. S. C. § 41(1), (12) and (14).

that the respondents had established a cause of action under the Constitution of the United States and under R. S. 1979, R. S. 1980 and R. S. 5508, as amended.[4]

The Circuit Court of Appeals concurred in the findings of fact; held the District Court had jurisdiction under Section 24 (1) and (14) of the Judicial Code; modified the decree in respect of one of its provisions, and, as modified, affirmed it.[5]

By their specifications of error, the petitioners limit the issues in this court to three matters. They contend that the court below erred in holding that the District Court had jurisdiction over all or some of the causes of action stated in the bill. Secondly, they assert that the court erred in holding that the street meeting ordinance is unconstitutional on its face, and that it has been unconstitutionally administered. Thirdly, they claim that the decree must be set aside because it exceeds the court's power and is impracticable of enforcement or of compliance.

First. Every question arising under the Constitution may, if properly raised in a state court, come ultimately to this court for decision. Until 1875,[6] save for the limited jurisdiction conferred by the Civil Rights Acts, *infra*, federal courts had no original jurisdiction of actions or suits merely because the matter in controversy arose under the Constitution or laws of the United States; and the jurisdiction then and since conferred upon United States courts has been narrowly limited.

Section 24 of the Judicial Code confers original jurisdiction upon District Courts of the United States. Subsection (1) gives jurisdiction of "suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000" and "arises under the Constitution or laws of the United States."

The wrongs of which respondents complain are tortious invasions of alleged civil rights by persons acting under color of state authority. It is true that if the various plaintiffs had brought actions at law for the redress of such wrongs the amount necessary to jurisdiction under Section 24 (1) would have been determined by the sum claimed in good faith.[7] But it does not follow that in a

[4] 8 U. S. C. §§ 43 and 47(3), 18 U. S. C. § 51.

[5] Hague *v.* Committee for Industrial Organization, 101 F. (2d) 774.

[6] See Act of March 3, 1875, c. 137, 18 Stat. 470.

[7] Wiley *v.* Sinkler, 179 U. S. 58; Swafford *v.* Templeton, 185 U. S. 487. Compare St. Paul Mercury Indemnity Co. *v.* Red Cab Co., 303 U. S. 283, 288.

suit to restrain threatened invasions of such rights a mere averment of the amount in controversy confers jurisdiction. In suits brought under subsection (1) a traverse of the allegation as to the amount in controversy, or a motion to dismiss based upon the absence of such amount, calls for substantial proof on the part of the plaintiff of facts justifying the conclusion that the suit involves the necessary sum.[8] The record here is bare of any showing of the value of the asserted rights to the respondents individually and the suggestion that, in total, they have the requisite value is unavailing, since the plaintiffs may not aggregate their interests in order to attain the amount necessary to give jurisdiction.[9] We conclude that the District Court lacked jurisdiction under Section 24(1).

Section 24(14) grants jurisdiction of suits "at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."[10]

The petitioners insist that the rights of which the respondents say they have been deprived are not within those described in subsection (14). The courts below have held that citizens of the United States possess such rights by virtue of their citizenship; that the Fourteenth Amendment secures these rights against invasion by a state, and authorizes legislation by Congress to enforce the Amendment.

Prior to the Civil War there was confusion and debate as to the relation between United States citizenship and state citizenship. Beyond dispute, citizenship of the United States, as such, existed. The Constitution, in various clauses, recognized it[11] but

[8] McNutt v. General Motors Acceptance Corp., 298 U. S. 178; compare KVOS, Inc. v. Associated Press, 299 U. S. 269.

[9] Wheless v. St. Louis, 180 U. S. 379; Pinel v. Pinel, 240 U. S. 594, 596; Scott v. Frazier, 253 U. S. 243.

[10] The section is derived from R. S. 563, Section 12, which, in turn, originated in Section 3 of the Civil Rights Act of April 9, 1866, 14 Stat. 27, as reenacted by Section 18 of the Civil Rights Act of May 31, 1870, 16 Stat. 144, and referred to in Section 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13.

[11] See Art. I, Sections 2 and 3; Art. II, Section 1.

nowhere defined it. Many thought state citizenship, and that only, created United States citizenship.[12]

After the adoption of the Thirteenth Amendment a bill, which became the first Civil Rights Act,[13] was introduced in the 39th Congress, the major purpose of which was to secure to the recently freed negroes all the civil rights secured to white men. This act declared that all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, were citizens of the United States and should have the same rights in every state to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to enjoy the full and equal benefit of all laws and proceedings for the security of persons and property to the same extent as white citizens. None other than citizens of the United States were within the provisions of the Act. It provided that "any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected any inhabitant of any State . . . to the deprivation of any right secured or protected by this act" should be guilty of a misdemeanor. It also conferred on district courts jurisdiction of civil actions by persons deprived of rights secured to them by its terms.

By reason of doubts as to the power to enact the legislation, and because the policy thereby evidenced might be reversed by a subsequent Congress, there was introduced at the same session an additional amendment to the Constitution which became the Fourteenth.

The first sentence of the Amendment settled the old controversy as to citizenship by providing that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Thenceforward citizenship of the United States became primary and citizenship of a state secondary.[14]

The first section of the Amendment further provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" . . .

---

[12] See Scott *v.* Sandford, 19 How. 393.

[13] Act of April 9, 1866, c. 31, 14 Stat. 27.

[14] Selective Draft Cases, 245 U. S. 366, 389.

The second Civil Rights Act[15] was passed by the 41st Congress. Its purpose was to enforce the provisions of the Fourteenth Amendment, pursuant to the authority granted Congress by the fifth section of the amendment. By Section 18 it reenacted the Civil Rights Act of 1866.

A third Civil Rights Act, adopted April 20, 1871,[16] provided "That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any state, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the state to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; . . ." This with changes of the arrangement of clauses which were not intended to alter the scope of the provision became R. S. 1979, now Title 8, § 43 of the United States Code.

As has been said, prior to the adoption of the Fourteenth Amendment, there had been no constitutional definition of citizenship of the United States, or of the rights, privileges, and immunities secured thereby or springing therefrom. The phrase "privileges and immunities" was used in Article IV, Section 2 of the Constitution, which decrees that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

At one time it was thought that this section recognized a group of rights which, according to the jurisprudence of the day, were classed as "natural rights"; and that the purpose of the section was to create rights of citizens of the United States by guaranteeing the citizens of every State the recognition of this group of rights by every other State. Such was the view of Justice Washington.[17]

While this description of the civil rights of the citizens of the States has been quoted with approval,[18] it has come to be the settled view that Article IV, Section 2, does not import that a citi-

[15] May 31, 1870, 16 Stat. 140. The act was amended by an Act of February 28, 1871, 16 Stat. 433.

[16] 17 Stat. 13, § 1.

[17] Corfield *v.* Coryell, 4 Was. C. C. 371, 6 Fed. Cas. No. 3230.

[18] The Slaughter-House Cases, 16 Wall. 36, 76; Maxwell *v.* Dow, 176 U. S. 581, 588, 591; Canadian Northern Ry. Co. *v.* Eggen, 252 U. S. 553, 560.

zen of one state carries with him into another fundamental privileges and immunities which come to him necessarily by the mere fact of his citizenship in the state first mentioned, but, on the contrary, that in any state every citizen of any other state is to have the same privileges and immunities which the citizens of that state enjoy. The section, in effect, prevents a state from discriminating against citizens of other states in favor of its own.[19]

The question now presented is whether freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the Act, and of the opportunities and advantages offered by it, is a privilege or immunity of a citizen of the United States secured against State abridgment[20] by Section 1 of the Fourteenth Amendment; and whether R. S. 1979 and Section 24(14) of the Judicial Code afford redress in a federal court *for such abridgment*. This is the narrow question presented by the record, and we confine our decision to it, without consideration of broader issues which the parties urge. The bill, the answer and the findings fully present the question. The bill alleges, and the findings sustain the allegation, that the respondents had no other purpose than to inform citizens of Jersey City by speech, and by the written word, respecting matters growing out of national legislation, the constitutionality of which this court has sustained.

Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgment,[21] it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects.

In the *Slaughter-House Cases* it was said, 16 Wall. 79: "The right to peaceably assemble and petition for redress of grievances,

---

[19] Downham *v.* Alexandria, 10 Wall. 173; Chambers *v.* B. & O. R. Co., 207 U. S. 142; LaTourette *v.* McMaster, 248 U. S. 465; Chalker *v.* Birmingham & N. W. Ry. Co., 249 U. S. 522; Shaffer *v.* Carter, 252 U. S. 37; United States *v.* Wheeler, 254 U. S. 281; Douglas *v.* N. Y., N. H. & H. R. Co., 279 U. S. 377; Whitfield *v.* Ohio, 297 U. S. 431.

[20] As to what constitutes state action within the meaning of the amendment, see Virginia *v.* Rives, 100 U. S. 313; Ex parte Virginia, 100 U. S. 339, 347; Home Tel. Co. *v.* Los Angeles, 227 U. S. 278; Mooney *v.* Holohan, 294 U. S. 103, 112; Lovell *v.* Griffin, 303 U. S. 444, 450.

[21] The Slaughter-House Cases, 16 Wall. 36, 77; Minor *v.* Happersett, 21 Wall. 162; Ex parte Virginia, 100 U. S. 339; In re Kemmler, 136 U. S. 436, 448.

the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the Federal Constitution.

In *United States* v. *Cruikshank*, 92 U. S. 542, 552-553, the court said:

"The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States."

No expression of a contrary view has ever been voiced by this court.

The National Labor Relations Act declares the policy of the United States to be to remove obstructions to commerce by encouraging collective bargaining, protecting full freedom of association and self-organization of workers, and, through their representatives, negotiating as to conditions of employment.

Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages, and opportunities to accrue to citizens therefrom. All of the respondents' proscribed activities had this single end and aim. The District Court had jurisdiction under Section 24(14).

Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for "citizens of the United States."[22] Only the individual respondents may, therefore, maintain this suit.

Second. What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city's ownership of

[22] Orient Insurance Co. v. Daggs, 172 U. S. 557; Holt v. Indiana Manufacturing Co., 176 U. S. 68; Western Turf Association v. Greenberg, 204 U. S. 359; Selover, Bates & Co. v. Walsh, 226 U. S. 112.

streets and parks is as absolute as one's ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.

The findings of fact negative the latter assumption. In support of the former the petitioners rely upon *Davis* v. *Massachusetts*, 167 U. S. 43. There it appeared that, pursuant to enabling legislation, the city of Boston adopted an ordinance prohibiting anyone from speaking, discharging fire arms, selling goods, or maintaining any booth for public amusement on any of the public grounds of the city except under a permit from the Mayor. Davis spoke on Boston Common without a permit and without applying to the Mayor for one. He was charged with a violation of the ordinance and moved to quash the complaint, *inter alia*, on the ground that the ordinance abridged his privileges and immunities as a citizen of the United States and denied him due process of law because it was arbitrary and unreasonable. His contentions were overruled and he was convicted. The judgment was affirmed by the Supreme Court of Massachusetts and by this court.

The decision seems to be grounded on the holding of the State court that the Common "was absolutely under the control of the legislature", and that it was thus "conclusively determined there was no right in the plaintiff in error to use the common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe." The Court added that the Fourteenth Amendment did not destroy the power of the states to enact police regulations as to a subject within their control or enable citizens to use public property in defiance of the constitution and laws of the State.

The ordinance there in question apparently had a different purpose from that of the one here challenged, for it was not directed solely at the exercise of the right of speech and assembly, but was addressed as well to other activities, not in the nature of civil rights, which doubtless might be regulated or prohibited as respects their enjoyment in parks. In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks.

We have no occasion to determine whether, on the facts disclosed, the *Davis Case* was rightly decided, but we cannot agree that it rules the instant case. Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

We think the court below was right in holding the ordinance quoted in Note 1 void upon its face.[23] It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent "riots, disturbances or disorderly assemblage." It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly "prevent" such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.

The bill recited that policemen, acting under petitioners' instructions, had searched various persons, including the respondents, and had seized innocent circulars and pamphlets without warrant or probable cause. It prayed injunctive relief against repetition of this conduct. The District Court made no findings of fact concerning such searches and seizures and granted no relief with respect to them. The Circuit Court of Appeals did not enlarge the terms of the decree but found that unreasonable searches and seizures had occurred and that the prohibitions of the Fourth Amendment had been taken over by the Fourteenth so as to protect citizens of the United States against such action.

The decree as affirmed by the court below does not restrain any searches or seizures. In each of its provisions addressed to inter-

[23] Lovell *v.* Griffin, *supra*. See the construction of the ordinance by the Supreme Court of New Jersey in Thomas *v.* Casey, 121 N. J. L. 185.

ference with liberty of the person, or to the conspiracy to deport, exclude, and interfere bodily with the respondents in pursuit of their peaceable activities, the decree contains a saving clause of which the following is typical: "except in so far as such personal restraint is in accordance with any right of search and seizure." In the light of this reservation we think there was no occasion for the Circuit Court of Appeals to discuss the question whether exemption from the searches and seizures proscribed by the Fourth Amendment is afforded by the privileges and immunities clause of the Fourteenth, and we have no occasion to consider or decide any such question.

Third. It remains to consider the objections to the decree. Section A deals with liberty of the person and prohibits the petitioners from excluding or removing the respondents or persons acting with them from Jersey City, exercising personal restraint over them without warrant or confining them without lawful arrest and production of them for prompt judicial hearing, saving lawful search and seizure; or interfering with their free access to the streets, parks, or public places of the city. The argument is that this section of the decree is so vague in its terms as to be impractical of enforcement or obedience. We agree with the court below that the objection is not well founded.

Section B deals with liberty of the mind. Paragraph 1 enjoins the petitioners from interfering with the right of the respondents, their agents and those acting with them, to communicate their views as individuals to others on the streets in an orderly and peaceable manner. It reserves to the petitioners full liberty to enforce law and order by lawful search and seizure or by arrest and production before a judicial officer. We think this paragraph unassailable.

Paragraphs 2 and 3 enjoin interference with the distribution of circulars, handbills and placards. The decree attempts to formulate the conditions under which respondents and their sympathizers may distribute such literature free of interference. The ordinance absolutely prohibiting such distribution is void under our decision in *Lovell* v. *Griffin, supra,* and petitioners so concede. We think the decree goes too far. All respondents are entitled to is a decree declaring the ordinance void and enjoining the petitioners from enforcing it.

Paragraph 4 has to do with public meetings. Although the court below held the ordinance void, the decree enjoins the petitioners as to the manner in which they shall administer it. There is an initial command that the petitioners shall not place "any previous restraint" upon the respondents in respect of holding meetings, provided they apply for a permit as required by the ordinance. This is followed by an enumeration of the conditions under which a permit may be granted or denied. We think this is wrong. As the ordinance is void, the respondents are entitled to a decree so declaring and an injunction against its enforcement by the petitioners. They are free to hold meetings without a permit and without regard to the terms of the void ordinance. The courts cannot rewrite the ordinance, as the decree, in effect, does.

The bill should be dismissed as to all save the individual plaintiffs, and Section B, paragraphs 2, 3 and 4 of the decree should be modified as indicated. In other respects the decree should be affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 651.—October Term, 1938.

Frank Hague, Individually and as Mayor of Jersey City, et al., &c., Petitioners,
vs.
Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, et al.
} On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[June 5, 1939.]

Mr. Justice Stone.

I do not doubt that the decree below, modified as has been proposed, is rightly affirmed, but I am unable to follow the path by which some of my brethren have attained that end, and I think the matter is of sufficient importance to merit discussion in some detail.

It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment. *Gitlow* v. *New York*, 268 U. S. 652; *Whitney* v. *California*, 274 U. S. 357; *Fiske* v. *Kansas*, 274 U. S. 380; *Stromberg* v. *California*, 283 U. S. 359; *Near* v. *Minnesota*, 283 U. S. 697; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *De Jonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Lovell* v. *Griffin*, 303 U. S. 444. It has never been held that either is a privilege or immunity peculiar to citizenship of the United States, to which alone the privileges and immunities clause refers, *Slaughter-House Cases*, 16 Wall. 36; *Duncan* v. *Missouri*, 152 U. S. 377, 382; *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Maxwell* v. *Bugbee*, 250 U. S. 525, 538; *Hamilton* v. *Regents*, 293 U. S. 245, 261, and neither can be brought within the protection of that clause without enlarging the category of privileges and immunities of United States citizenship as it has hitherto been defined.

As will presently appear, the right to maintain a suit in equity to restrain state officers, acting under a state law, from infringing the rights of freedom of speech and of assembly guaranteed by the due process clause, is given by Act of Congress to every person within the jurisdiction of the United States whether a citizen or not, and such a suit may be maintained in the district court without allegation or proof that the jurisdictional amount required by § 24 (1) of the Judicial Code is involved. Hence there is no occasion, for jurisdictional purposes or any other, to consider whether freedom of speech and of assembly are immunities secured by the privileges and immunities clause of the Fourteenth Amendment to citizens of the United States, or to revive the contention, rejected by this Court in the *Slaughter-House Cases*, *supra*, that the privileges and immunities of United States citizenship, protected by that clause, extend beyond those which arise or grow out of the relationship of United States citizens to the national government.[1]

---

[1] The privilege or immunity asserted in the Slaughter-House cases was the freedom to pursue a common business or calling, alleged to have been infringed by a state monopoly statute. It should not be forgotten that the Court, in deciding the case, did not deny the contention of the dissenting justices that the asserted freedom was in fact infringed by the state law. It rested its decision rather on the ground that the immunity claimed was not one belonging to persons by virtue of their citizenship. "It is quite clear", the Court declared (p. 74), "that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend on different characteristics in the individual." And it held that the protection of the privileges and immunities clause did not extend to those "fundamental" rights attached to state citizenship which are peculiarly the creation and concern of state governments and which Mr. Justice Washington, in Corfield v. Coryell, 4 Wash. C. C. 371, 6 Fed. Cas. No. 3230, mistakenly thought to be guaranteed by Article IV, § 2 of the Constitution. The privileges and immunities of citizens of the United States, it was pointed out, are confined to that limited class of interests growing out of the relationship between the citizen and the national government created by the Constitution and federal laws. Slaughter-House Cases, 16 Wall. 36, 79; see Twining v. New Jersey, 211 U. S. 78, 97, 98.

That limitation upon the operation of the privileges and immunities clause has not been relaxed by any later decisions of this Court. In re Kemmler, 136 U. S. 436, 448; McPherson v. Blacker, 146 U. S. 1, 38; Giozza v. Tiernan, 148 U. S. 657, 661; Duncan v. Missouri, 152 U. S. 377, 382. Upon that ground appeals to this Court to extend the clause beyond the limitation have uniformly been rejected, and even those basic privileges and immunities secured against federal infringement by the first eight amendments have uniformly been held not to be protected from state action by the privileges and immunities clause. Walker v. Sauvinet, 92 U. S. 90; Hurtado v. California, 110 U. S. 516; Presser v. Illinois, 116 U. S. 252; O'Neill v. Vermont, 144 U. S. 323; Maxwell v. Dow, 176 U. S. 581; West v. Louisiana, 194 U. S. 258; Twining v. New Jersey, *supra*; Palko v. Connecticut, 302 U. S. 319.

The reason for this narrow construction of the clause and the consistently exhibited reluctance of this Court to enlarge its scope has been well understood since the decision of the Slaughter-Houses Cases. If its restraint upon state

That such is the limited application of the privileges and immunities clause seems now to be conceded by my brethren. But it is said that the freedom of respondents with which the petitioners have interfered is the "freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the Act, and of the opportunities and advantages offered by it", and that these are privileges and immunities of citizens of the United States secured against state abridgment by the privileges and immunities clause of the Fourteenth Amendment. It has been said that the right of citizens to assemble for the purpose of petitioning Congress for the redress of grievances is a privilege of United States citizenship protected by the privileges and immunities clause. *United States* v. *Cruikshank*, 92 U. S. 542, 552-553. We may assume for present purposes, although the step is a long and by no means certain one, see *Maxwell* v. *Dow*, 176 U. S. 581; *Twining* v. *New Jersey*, *supra*, that the right to assemble to discuss the advantages of the National Labor Relations Act is likewise a privilege secured by the privileges and immunities clause to citizens of the United States, but not to others, while freedom to assemble for the purpose of discussing a similar state statute would not be within the privileges and immunities clause. But the difficulty with this assumption is, as the record and briefs show, that it is an afterthought first emerging in this case after it was submitted to us for decision, and like most afterthoughts in litigated matters it is without adequate support in the record.

---

action were to be extended more than is needful to protect relationships between the citizen and the national government, and if it were to be deemed to extend to those fundamental rights of person and property attached to citizenship by the common law and enactments of the states when the Amendment was adopted, such as were described in Corfield v. Coryell, *supra*, it would enlarge Congressional and judicial control of state action and multiply restrictions upon it whose nature, though difficult to anticipate with precision, would be of sufficient gravity to cause serious apprehension for the rightful independence of local government. That was the issue fought out in the Slaughter-House Cases, with the decision against enlargement.

Of the fifty or more cases which have been brought to this Court since the adoption of the Fourteenth Amendment in which state statutes have been assailed as violating the privileges and immunities clause, in only a single case was a statute held to infringe a privilege or immunity peculiar to citizenship of the United States. In that one, Colgate v. Harvey, 296 U. S. 404, it was thought necessary to support the decision by pointing to the specific reference in the Slaughter-House Cases, *supra*, 79, to the right to pass freely from state to state, sustained as a right of national citizenship in Crandall v. Nevada, 6 Wall. 35, before the adoption of the Amendment.

The cases will be found collected in Footnote 2 of the dissenting opinion in Colgate v. Harvey, 296 U. S. 404, 445. To these should be added Holden v. Hardy, 169 U. S. 366; Ferry v. Spokane P. & S. R. Co., 258 U. S. 314; New York ex rel. Bryant v. Zimmerman, 278 U. S. 63; Whitfield v. Ohio, 297 U. S. 431; Breedlove v. Suttles, 302 U. S. 277; Palko v. Connecticut, 302 U. S. 319.

The respondents in their bill of complaint specifically named and quoted Article IV, § 2, now conceded to be inapplicable, and the due process and equal protection clauses of the Fourteenth Amendment as the provisions of the Constitution which secure to them the rights of free speech and assembly. They omitted the privileges and immunities clause of the Fourteenth Amendment from their quotation. They made no specific allegation that any of those whose freedom had been interfered with by petitioners was a citizen of the United States. The general allegation that the acts of petitioners complained of violate the rights of "citizens of the United States, including the individual plaintiffs here", and other allegations of like tenor, were denied by petitioners' answer. There is no finding by either court below that any of respondents or any of those whose freedom of speech and assembly has been infringed are citizens of the United States, and we are referred to no part of the evidence in which their citizenship is mentioned or from which it can be inferred.

Both courts below found, and the evidence supports the findings, that the purpose of respondents, other than the Civil Liberties Union, in holding meetings in Jersey City, was to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment. Whether the proposed unions were to be organized in industries which might be subject to the National Labor Relations Act or to the jurisdiction of the National Labor Relations Board does not appear. Neither court below has made any finding that the meetings were called to discuss, or that they ever did in fact discuss, the National Labor Relations Act. The findings do not support the conclusion that the proposed meetings involved any such relationship between the national government and respondents or any of them, assuming they are citizens of the United States, as to show that the asserted right or privilege was that of a citi of the United States, and I cannot say that an adequate basis has been laid for supporting a theory—which respondents themselves evidently did not entertain—that any of their privileges as citizens of the United States, guaranteed by the Fourteenth Amendment, were abridged, as distinguished from the privileges guaranteed to all persons by the due process clause. True, the findings refer to the suppression by petitioners of exhibits, one of which turns out to be a handbill advising workers they have the legal right, under the

Wagner Act, to choose their own labor union to represent them in collective bargaining. But the injunction, which the Court now rightly sustains, is not restricted to the protection of the right, said to pertain to United States citizenship, to disseminate information about the Wagner Act. On the contrary it extends and applies in the broadest terms to interferences with respondents in holding any lawful meeting and disseminating any lawful information by circular, leaflet, handbill and placard. If, as my brethren think, respondents are entitled to maintain in this suit only the rights secured to them by the privileges and immunities clause of the Fourteenth Amendment—here the right to disseminate information about the National Labor Relations Act—it is plain that the decree is too broad. Instead of enjoining, as it does, interferences with all meetings for all purposes and the lawful dissemination of all information, it should have confined its restraint to interferences with the dissemination of information about the National Labor Relations Act, through meetings or otherwise. The court below rightly omitted any such limitation from the decree, evidently because, as it declared, petitioners' acts infringed the due process clause, which guarantees to all persons freedom of speech and of assembly for any lawful purpose.

No more grave and important issue can be brought to this Court than that of freedom of speech and assembly, which the due process clause guarantees to all persons regardless of their citizenship, but which the privileges and immunities clause secures only to citizens, and then only to the limited extent that their relationship to the national government is affected. I am unable to rest decision here on the assertion, which I think the record fails to support, that respondents must depend upon their limited privileges as citizens of the United States in order to sustain their cause, or upon so palpable an avoidance of the real issue in the case, which respondents have raised by their pleadings and sustained by their proof. That issue is whether the present proceeding can be maintained under § 24(14) of the Judicial Code as a suit for the protection of rights and privileges guaranteed by the due process clause. I think respondents' right to maintain it does not depend on their citizenship and cannot rightly be made to turn on the existence or non-existence of a purpose to disseminate information about the National Labor Relations Act. It is enough that peti-

tioners have prevented respondents from holding meetings and disseminating information whether for the organization of labor unions or for any other lawful purpose.

If it be the part of wisdom to avoid unnecessary decision of constitutional questions, it would seem to be equally so to avoid the unnecessary creation of novel constitutional doctrine, inadequately supported by the record, in order to attain an end easily and certainly reached by following the beaten paths of constitutional decision.

The right to maintain the present suit is conferred upon the individual respondents by the due process clause and Acts of Congress, regardless of their citizenship and of the amount in controversy. Section 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, provided that "any person who, under color of any law, statute, ordinance . . . of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall . . . be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress". And it directed that such proceedings should be prosecuted in the several district or circuit courts of the United States. The right of action given by this section was later specifically limited to "any citizen of the United States or other person within the jurisdiction thereof", and was extended to include rights, privileges and immunities secured by the laws of the United States as well as by the Constitution. As thus modified the provision was continued as § 1979 of the Revised Statutes and now constitutes § 43 of Title 8 of the United States Code. It will be observed that the cause of action, given by the section in its original as well as its final form, extends broadly to deprivation by state action of the rights, privileges and immunities secured to persons by the Constitution. It thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. It will also be observed that they are those rights secured to persons, whether citizens of the United States or not, to whom the Amendment in terms extends the benefit of the due process and equal protection clauses.

Following the decision of the *Slaughter-House Cases* and before the later expansion by judicial decision of the content of the due process and equal protection clauses, there was little scope for the operation of this statute under the Fourteenth Amendment. The observation of the Court in *United States* v. *Cruikshank*, 92 U. S. 542, 551, that the right of assembly was not secured against state action by the Constitution, must be attributed to the decision in the *Slaughter-House Cases* that only privileges and immunities peculiar to United States citizenship were secured by the privileges and immunities clause, and to the further fact that at that time it had not been decided that the right was one protected by the due process clause. The argument that the phrase in the statute "secured by the Constitution" refers to rights "created", rather than "protected" by it, is not persuasive. The preamble of the Constitution, proclaiming the establishment of the Constitution in order to "secure the Blessings of Liberty", uses the word "secure" in the sense of "protect" or "make certain". That the phrase was used in this sense in the statute now under consideration was recognized in *Carter* v. *Greenhow*, 114 U. S. 317, 322, where it was held as a matter of pleading that the particular cause of action set up in the plaintiff's pleading was in contract and was not to redress deprivation of the "right secured to him by that clause of the Constitution" [the contract clause], to which he had "chosen not to resort". See, as to other rights protected by the Constitution and hence secured by it, brought within the provisions of R. S. § 5508, *Logan* v. *United States*, 144 U. S. 263; *In re Quarles and Butler*, 158 U. S. 532; *United States* v. *Mosley*, 238 U. S. 383.

Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by § 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons. *Northwestern Life Insurance Co.* v. *Riggs*, 203 U. S. 243, 255; *Western Turf Ass'n* v. *Greenberg*, 204 U. S. 359, 363.

The question remains whether there was jurisdiction in the district court to entertain the suit although the matter in controversy cannot be shown to exceed $3,000 in value because the asserted

rights, freedom of speech and freedom of assembly, are of such a nature as not to be susceptible of valuation in money. The question is the same whether the right or privilege asserted is secured by the privileges and immunities clause or any other. When the Civil Rights Act of 1871 directed that suits for violation of § 1 of that Act should be prosecuted in the district and circuit courts, the only requirement of a jurisdictional amount in suits brought in the federal courts was that imposed by § 11 of the Judiciary Act of 1789, which conferred jurisdiction on the circuit courts of suits where "the matter in dispute" exceeded $500 and the United States was a plaintiff, or an alien was a party, or the suit was between citizens of different states; and it was then plain that the requirement of a jurisdictional amount did not extend to the causes of action authorized by the Civil Rights Act of 1871. By the Act of March 3, 1875, c. 137, 18 Stat. 470, the jurisdiction of the circuit courts was extended to suits at common law or in equity "arising under the Constitution or laws of the United States" in which the matter in dispute exceeded $500. By the Act of March 3, 1911, c. 231, 36 Stat. 1087, the circuit courts were abolished and their jurisdiction was transferred to the district courts, and by successive enactments the jurisdictional amount applicable to certain classes of suits was raised to $3,000. The provisions applicable to such suits, thus modified, appear as § 24(1) of the Judicial Code, 28 U. S. C. § 41(1).

Meanwhile, the provisions conferring jurisdiction on district and circuit courts over suits brought under § 1 of the Civil Rights Act of 1871 were continued as R. S. §§ 563 and 629, and now appear as § 24(14) of the Judicial Code, 28 U. S. C. § 41(14). The Act of March 3, 1911, 36 Stat. 1087, 1091, amended § 24(1) of the Judicial Code so as to direct that "The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section".[2] Thus, since 1875, the jurisdictional acts have contained two parallel provisions, one conferring jurisdiction on the federal courts, district or circuit, to entertain suits "arising under the Constitution or laws of the United States" in which the amount in

[2] This provision made no change in existing law but was inserted for the purpose of removing all doubt upon the point. See H. R. Rep. No. 783, Part 1, 61st Cong., 2d Sess., p. 15; Sen. Rep. No. 388, Part 1, 61st Cong., 2d Sess. p. 11. Cf. Miller-Magee Co. *v.* Carpenter, 34 Fed. 435; Ames *v.* Hager, 36 Fed. 129.

controversy exceeds a specified value; the other, now § 24(14) of the Judicial Code, conferring jurisdiction on those courts of suits authorized by the Civil Rights Act of 1871, regardless of the amount in controversy.

Since all of the suits thus authorized are suits arising under a statute of the United States to redress deprivation of rights, privileges and immunities secured by the Constitution, all are literally suits "arising under the Constitution or laws of the United States". But it does not follow that in every such suit the plaintiff is required by § 24(1) of the Judicial Code to allege and prove that the constitutional immunity which he seeks to vindicate has a value in excess of $3,000. There are many rights and immunities secured by the Constitution, of which freedom of speech and assembly are conspicuous examples, which are not capable of money valuation, and in many instances, like the present, no suit in equity could be maintained for their protection if proof of the jurisdictional amount were prerequisite. We can hardly suppose that Congress, having in the broad terms of the Civil Rights Act of 1871 vested in all persons within the jurisdiction of the United States a right of action in equity for the deprivation of constitutional immunities, cognizable only in the federal courts, intended by the Act of 1875 to destroy those rights of action by withholding from the courts of the United States jurisdiction to entertain them.

That such was not the purpose of the Act of 1875 in extending the jurisdiction of federal courts to causes of action arising under the Constitution or laws of the United States involving a specified jurisdictional amount, is evident from the continuance upon the statute books of § 24(14) side by side with § 24(1) of the Judicial Code, as amended by the Act of 1875. Since the two provisions stand and must be read together, it is obvious that neither is to be interpreted as abolishing the other, especially when it is remembered that the 1911 amendment of § 24(1) provided that the requirement of a jurisdictional amount should not be construed to apply to cases mentioned in § 24(14). This must be taken as legislative recognition that there are suits authorized by § 1 of the Act of 1871 which could be brought under § 24(14) after, as well as before, the amendment of 1875 without compliance with any requirement of jurisdictional amount, and that these at least must be deemed to include suits in which the subject matter is one incapable of valuation. Otherwise we should be forced to reach

the absurd conclusion that § 24(14) is meaningless and that a large proportion of the suits authorized by the Civil Rights Act cannot be maintained in any court, although jurisdiction of them, with no requirement of jurisdictional amount, was carefully preserved by § 24(14) of the Judicial Code and by the 1911 amendment of § 24(1). By treating § 24(14) as conferring federal jurisdiction of suits brought under the Act of 1871 in which the right asserted is inherently incapable of pecuniary valuation, we harmonize the two parallel provisions of the Judicial Code, construe neither as superfluous, and give to each a scope in conformity with its history and manifest purpose.

The practical construction which has been given by this Court to the two jurisdictional provisions establishes that the jurisdiction conferred by § 24(14) has been preserved to the extent indicated. In *Holt* v. *Indiana Mfg. Co.*, 176 U. S. 68, suit was brought to restrain alleged unconstitutional taxation of patent rights. The Court held that the suit was one arising under the Constitution or laws of the United States within the meaning of § 24(1) of the Judicial Code and that the United States Circuit Court in which the suit had been begun was without jurisdiction because the challenged tax was less than the jurisdictional amount. The Court remarked that the present § 24(14) applied only to suits alleging deprivation of "civil rights". On the other hand, in *Truax* v. *Raich*, 239 U. S. 33, aff'g 219 Fed. 273, this Court sustained the jurisdiction of a district court to entertain the suit of an alien to restrain enforcement of a state statute alleged to be an infringement of the equal protection clause of the Fourteenth Amendment because it discriminated against aliens in their right to seek and retain employment. The jurisdiction of a district court was similarly sustained in *Crane* v. *Johnson*, 242 U. S. 339, on the authority of *Truax* v. *Raich*, *supra*. The suit was brought in a district court to restrain enforcement of a state statute alleged to deny equal protection in suppressing the freedom to pursue a particular trade or calling. For the purposes of the present case it is important to note that the constitutional right or immunity alleged in these two cases was one of personal freedom, invoked in the *Raich* case by one not a citizen of the United States. In both cases the right asserted arose under the equal protection, not the privileges and immunities clause; in both the gist of the cause of action was not damage or injury to property, but unconstitutional infringement of a right

of personal liberty not susceptible of valuation in money. The jurisdiction was sustained despite the omission of any allegation or proof of jurisdictional amount, pointedly brought to the attention of this Court.

The conclusion seems inescapable that the right conferred by the Act of 1871 to maintain a suit in equity in the federal courts to protect the suitor against a deprivation of rights or immunities secured by the Constitution, has been preserved, and that whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights, there is jurisdiction in the district court under § 24(14) of the Judicial Code to entertain it without proof that the amount in controversy exceeds $3,000. As the right is secured to "any person" by the due process clause, and as the statute permits the suit to be brought by "any person" as well as by a citizen, it is certain that resort to the privileges and immunities clause would not support the decree which we now sustain and would involve constitutional experimentation as gratuitous as it is unwarranted. We cannot be sure that its consequences would not be unfortunate.

Mr. Chief Justice HUGHES, concurring:

With respect to the merits I agree with the opinion of Mr. Justice ROBERTS and in the affirmance of the judgment as modified. With respect to the point as to jurisdiction I agree with what is said in the opinion of Mr. Justice ROBERTS as to the right to discuss the National Labor Relations Act being a privilege of a citizen of the United States, but I am not satisfied that the record adequately supports the resting of jurisdiction upon that ground. As to that matter, I concur in the opinion of Mr. Justice STONE.

Mr. Justice MCREYNOLDS.

I am of opinion that the decree of the Circuit Court of Appeals should be reversed and the cause remanded to the District Court with instructions to dismiss the bill. In the circumstances disclosed, I conclude that the District Court should have refused to interfere

by injunction with the essential rights of the municipality to control its own parks and streets. Wise management of such intimate local affairs, generally at least, is beyond the competency of federal courts, and essays in that direction should be avoided.

There was ample opportunity for respondents to assert their claims through an orderly proceeding in courts of the state empowered authoritatively to interpret her laws with final review here in respect of federal questions.

Mr. Justice BUTLER.

I am of opinion that the challenged ordinance is not void on its face; that in principle it does not differ from the Boston ordinance, as applied and upheld by this Court, speaking through Mr. Justice White, in *Davis* v. *Massachusetts*, 167 U. S. 43, affirming the Supreme Judicial Court of Massachusetts, speaking through Mr. Justice Holmes, in *Commonwealth* v. *Davis*, 162 Mass. 510, and that the decree of the Circuit Court of Appeals should be reversed.